

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

8-71-1015
2-27-56
②

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

October Term 1955

No. 12,948

CHARLES H. PLUMMER, JR., APPELLANT,
vs.

THE UNITED STATES OF AMERICA, APPELLEE.

299

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA *United States Court of Appeals
For the
District of Columbia Circuit*

I N D E X

FILED JAN 4 1956

Witnesses:

Joseph W. Stewart

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JOINT APPENDIX

vs.

Criminal No. 726-54

CHARLES H. PLUMMER, JR.,

Defendant.

Washington, D. C.,

Wednesday, September 14, 1955.

The above-entitled cause came on for trial before Honorable LUTHER W. YOUNGDAHL, a judge in the United States District Court, and a jury, at 10:00 a. m.

APPEARANCES:

For the Government:

JOEL D. BLACKWELL, Esq.,

Assistant United States Attorney.

For the Defendant:

JOHN D. FAUNTLEROY, Esq.

P R O C E E D I N G S

(3)

(After the empaneling of a jury and opening statement by the Assistant United States Attorney, the following occurred:)

Thereupon,

BARBARA LOUISE SPRIGGS

was called as a witness on behalf of the Government and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q State your full name, please.

A Barbara Louise Spriggs.

MR. FAUNTLEROY: Pardon me, Your Honor. The defendant here is a little hard of hearing. With the permission of The Court, I wonder could we move to this next table?

THE COURT: Surely.

BY MR. BLACKWELL:

Q Where were you living on June 18, last year?

(4)

A 1211 - 18th Street, Northeast.

Q Now, is 1211 - 18th Street, Northeast, here in the District of Columbia?

A Yes.

Q Do you know the defendant in this case, Charles H. Plummer, Jr.?

A Yes.

Q How long have you known him, approximately?

(4)

A About a year and a half, now.

Q Directing your attention to June 18 of last year, were you home during the early evening?

A Yes.

Q What time did you have dinner?

A It is usually around 4:30, but this evening it was later.

Q You will have to keep your voice up, madam.

A It is usually around 4:30.

Q What time did you have dinner on June 18 of last year?

A About 8:30 or a quarter to 9:00.

Q Where did you live in this particular home? Did you have the entire house or did you live in a certain section? (5)

A On 18th Street?

Q Yes. Where did you live, what section of the building?

A I had two rooms on the second floor in the rear and I shared the bath, and my kitchen was in the basement.

Q All right, now, directing your attention to this particular evening, June 18, did there come a time -- I would like to inquire -- when you left your apartment to go to the kitchen to prepare your dinner?

A Yes.

Q What time was that, approximately?

A About 8:15 p. m.

Q Now, are you the mother of one Maria N. Simpson?

A Yes.

Q How old was she on June 18 of last year?

A Eleven months old.

Q Do you have any other children?

A Yes..

Q How old are they?

A Six years, five years, three years, two years, and four months.

Q Just a moment, how many do you have?

A Five.

Q Well, now, how many children did you have living with you at this particular address on June 18? (6)

A Three.

Q Well, what were the ages of the three living with you -- the two (6) other than Maria living with you at that time, their ages at that time?

A Four years and two years.

Q What were their names?

A Thomas Springgs, four years; and Sharon Spriggs, two years.

Q Now, on this particular evening when you went downstairs to prepare your dinner, did you take any of the children with you?

A Yes.

Q Which ones did you take, or which one?

A Thomas and Sharon.

Q What did you do with Maria?

A I left her in the bed asleep.

Q Did you observe her condition prior to your leaving?

A Yes.

Q What was her condition?

A She was in the bed with her polo shirt, under shirt, and her diaper on.

Q Polo shirt, under shirt, and diaper; did you say?

A Yes.

Q Was she awake or was she asleep?

(7)

A She was asleep.

Q Now, how long did you remain downstairs in the kitchen; do you recall, approximately?

A About an hour.

Q When you went to the basement did you leave anyone in your apartment?

A No.

Q Other than Maria?

A No.

Q Did you see the defendant when you proceeded to the basement kitchen?

A No.

Q Now, there came a time when you came back upstairs after dinner; is that correct?

A That is right.

Q Was Maria there then?

A Yes.

Q Was she in the same condition she was when you left about an hour before?

A No. (7)

Q Was there anything unusual about her at that time?

A Yes.

Q Now, will you describe to His Honor and these ladies and gentlemen of the jury just what of an unusual nature there was about Maria upon your return from your dinner? (8)

A When I came back I found her in the bed completely naked.

Q Please keep your voice up, Mrs. Spriggs.

A I found her in the bed completely naked and she was bleeding from her vagina and there was blood all over the bed.

Q Was anyone in the room?

A No.

Q What was the condition of the apartment? Was it dark or was it light?

A It was light.

Q What was the condition when you left?

A The lights were out.

Q Now, did you see anyone in the vicinity of the apartment at that time after you discovered her in this unusual condition?

A I saw Mr. Plummer in the bathroom.

Q Now, you say Mr. Plummer; are you referring to the defendant in this case, Charles H. Plummer?

A Yes.

Q What was Mr. Plummer doing in the bathroom, if you know?

A Washing his hands.

Q Did you have a conversation with him at that time? (9)

A Yes.

Q What was the nature of that conversation?

A I asked him what had happened to the baby and he told me he didn't know, that he had picked the baby up and he had gotten blood all over his shirt.

Q Did he make any further statement?

A No. I asked him what had happened to the baby. He didn't answer me.

Q You say he did not answer you?

A No.

Q Did you ask him whether or not after he found the baby in this condition whether he called you or not?

A Later he told me --

Q Or called anyone?

(9)

A Later he told the detective that he had called me but I didn't hear.

Q All right, now, after finding the baby in this condition,

Mrs. Spriggs, what did you do if anything?

A I took her to D. C. General Hospital.

Q What did they do there? Did they treat the baby there?

A They just told me that she would be all right and sent me back home.

They asked me if any little boys had been playing with her because she (10)

had —

Q I don't think you need tell us about the conversation you had there, but I believe it is your testimony that they treated the baby and returned the baby home?

A Yes.

Q What did you do next?

A I talked to my landlady.

Q Well, now, don't tell us what you said to your landlady and what your landlady said to you, but as a result of your conversation with your landlady did you do anything and if so what?

A I took her to Children's Hospital.

Q Was she treated at Children's Hospital?

A No.

Q As a result of that — they didn't treat her at the Children's Hospital — what did you do then?

A Took her back to D. C. General and talked to the policeman on duty, as I was advised, and he called the sex squad detectives. (11)

Q Did there come a time when the members of the sex squad or some member of the sex squad came to your apartment at 1211 13th Street?

A Yes.

Q Was the defendant there then?

A Yes.

Q Did you hear the members of the sex squad question the defendant?

A Yes.

Q What did they say to the defendant?

A They asked him what had happened to the baby, why he had blood on his shirt, and I don't remember what else.

Q Well, what did the defendant say?

(11)
A He said that he had just picked the baby up, that he had gotten blood all over his shirt, and she was bleeding when he went in the room, and he didn't know what had happened to her.

CROSS EXAMINATION

(12)

BY MR. FAUNTLEROY:

Q Now, Mrs. Spriggs, I think you said you had known Charles Plummer for about a year and a half; that is correct, isn't it?

A Yes.

Q And the offense took place on June 18, I believe, 1954?

A Yes.

Q Now, how long had you known Charles Plummer prior to June 18, 1954?

A About two months.

Q Now, will you tell us, please, just what relationship was between you and Charles Plummer?

A He was my boy friend.

Q Now, being your boy friend, did he stay with you at night?

A Sometimes.

Q Did there come a time when you and Charles Plummer began living (13) together, sharing the same bed and living in the same apartment?

A Yes.

Q And when was that?

A About a month before.

Q Before this occurred?

A Before this happened, yes.

Q And will you tell the members of the jury just how Charles Plummer treated your children? I think you had three children at that time.

A Yes. He treated them like a father would. He didn't mistreat them, as far as I knew anything about it.

Q As a matter of fact, he was very kind to them; was he not?

A Yes.

Q Now, in this month prior to the happening of this unfortunate incident when you were living with Charles Plummer, you had a satisfactory sexual relation with him; is that correct?

A Yes.

Q Now, there came a time when you went downstairs and you left little Maria upstairs, the eleven-month old child. Will you tell us, please, who (14) was on the first floor?

A My landlord, Mr. Lattner, his wife, and three of their friends, the two Richardson brothers and one of their wives.

Q Now, did you stop to talk with them at this time when you went down to the kitchen?

A No.

Q Did you see Charles Plummer there at that time?

A No.

Q Now, will you tell us just what the Lattners were doing at that time?

A They were playing records and drinking.

Q What were they drinking?

A I don't know. I know they were drinking beer.

Q And they were playing records?

A Yes.

Q In other words, they were having sort of a little party in this room; is that correct?

A Yes, I guess so.

Q And will you tell us just about what time of day this party started?

A I don't know what time it started, but I got there at about 6:15 and they were there then.

Q Now, you were there earlier in the day; is that correct?

A Yes, I was there before dinner. I had gone out to the store at about 6:30 or so, I believe. (15)

Q Now, at that time they were still having a party there, weren't they?

A No, not when I left they weren't?

Q They had earlier that afternoon?

A I don't recall.

Q In other words, you really don't remember?

A Not before -- not before, I don't remember earlier.

Q Now, when you were up on the second floor attending to your little Maria could you hear the music?

A Yes.

Q In other words, it was pretty loud, wasn't it?

A Well, not necessarily because the room where the thing was was directly under my bedroom and therefore it made it easier for me to hear the music.

Q You are not keeping your voice up.

I wonder would you, Mrs. Spriggs, be kind enough to draw us a diagram on this board of just the position of your room that you occupied in your apartment?

A All right.

MR. BLACKWELL: If she is able to draw it.

MR. FAUNTLEROY: Just a rough sketch. We won't ask for anything special.

(Witness withdrew from stand.)

THE COURT: Show it to her and if she agrees it is correct, you can draw it.

THE WITNESS: I can't draw that.

MR. FAUNTLEROY: You can't draw it like that? Maybe I can help you. I am not an expert drawer. If Your Honor wants me to do it, she has acknowledged that this is the exact diagram of the house.

MR. BLACKWELL: That being correct, Your Honor, I don't object to the defense counsel placing it on the board.

(Mr. Fauntleroy, defense counsel, drew diagram on blackboard.)

BY MR. FAUNTLEROY:

(17)

Q This is the front of the house here (indicating). Would you say this (indicating) is Mr. Lattner's bedroom?

A Yes.

Q And this (indicating) would be the toilet; is that correct?

A Yes.

Q And this (indicating) is sort of a stairway coming up to the second floor; is that right?

A Yes.

Q Now, this (indicating) is sort of a bedroom here. Whose room is this?

A A spare room.

Q Now, this (indicating) is sort of a back porch. Did anybody occupy this?

A No, it wasn't a room.

Q Now, will you describe whose room this (indicating) was?

A That was my bedroom.

Q And how about this room (indicating)?

A That was the living room.

Q Now, in which room did you have little Maria?

A In the bedroom.

Q Now, if you would like to, you may use this pointer. (17)

THE COURT: She isn't talking loud enough for the jury to hear. (18)

If you don't need her any more there, you had better put her on the stand.

MR. FAUNTLEROY: All right, Your Honor, if you prefer her on the stand.

THE COURT: It is a little easier for the jury.

(Witness resumed stand.)

BY MR. FAUNTLEROY:

Q Which room was it that you had little Marie in?

A She was in the bedroom.

Q When you say the bedroom, that is this room here (indicating)?

A Yes.

Q And on the first floor, the room where the party was going on was directly under this room (indicating); is that correct?

A That is right.

Q And you could hear the phonograph playing all the time?

A Yes.

Q Now, when you went downstairs to go to the kitchen you left little Maria in the bedroom; is that right?

A That is right.

Q Now, will you tell us just where the kitchen is in the house that you went to to prepare the dinner?

A It is in the basement.

Q Now, could you tell us approximately under what room on the second floor would the kitchen in the basement be located? (19)

A It was under my bedroom and the living room.

Q Under your bedroom?

A And the living room.

Q And the living room. In other words, it would be in the basement under these two rooms (indicating); is that right?

A That is right.

Q Did you hear, Mrs. Spriggs, the defendant here call you?

A No, I didn't.

Q When you were down in the kitchen could you hear the music playing?

A Yes.

Q Now, tell me this: When the policemen came to examine Charles Plummer, did they examine anybody else or did they question anybody else with reference to what had happened?

A No. (19)

Q Now, actually, the fact that you were in the basement and you were cooking dinner and there was a sort of party going on on the first floor, you couldn't have heard Charles Plummer if he had called you anyway, could you?

A No. (20)

MR. FAULTLEROY: That is all, Your Honor.

DOYLE G. LATNER

was called as a witness on behalf of the Government and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q State your full name, please, sir.

A Doyle G. Latner.

Q Where do you live?

A 1211 - 18th Street, Northeast.

Q Were you living at 1211 - 18th Street, Northeast, on the 18th of June of last year?

A I were, sir.

Q Do you know the defendant, Charles H. Plummer, Jr.?

A I do, sir.

Q How long have you known him?

A Well, just I would say a couple of months before this 18th.

Q Do you know Mrs. Spriggs, Mrs. Barbara L. Spriggs? (21)

A I do, sir.

Q Was she a tenant of yours on June 18 of last year?

A She was, sir.

Q What section of the house did she occupy, sir?

A She occupied upstairs, apartment two, upstairs, and a kitchen downstairs in the basement.

Q Directing your attention to June 18 of last year, did you have occasion to see the defendant in your home on that particular evening?

A I did, sir.

Q About what time did you see him there or did he come there, sir?

A Well, somewhere between 7:30 and 8:00 o'clock, 8:15 or

A The lights were out.

Q Now, did you see anyone in the vicinity of the apartment at that time after you discovered her in this unusual condition?

A I saw Mr. Plummer in the bathroom.

Q Now, you say Mr. Plummer; are you referring to the defendant in this case, Charles H. Plummer?

A Yes.

Q What was Mr. Plummer doing in the bathroom, if you know?

A Washing his hands.

Q Did you have a conversation with him at that time? (9)

A Yes.

Q What was the nature of that conversation?

A I asked him what had happened to the baby and he told me he didn't know, that he had picked the baby up and he had gotten blood all over his shirt.

Q Did he make any further statement?

A No, I asked him what had happened to the baby. He didn't answer me.

Q You say he did not answer you?

A No.

Q Did you ask him whether or not after he found the baby in this condition whether he called you or not?

A Later he told me --

Q What were you doing if anything? (21)

A Well, I had some friends visiting and we was having a few beers and sitting around.

Q Do you remember when the defendant came to your home?

A I do, sir.

Q How do you remember?

A Well, I was there in the kitchen as he came to the door and I (22)
invited him back to have a beer, so he did.

Q Now, where did this drinking of the beer take place, in the kitchen or what part?

A No, right in the porch room, in the television room, where I have kind of a den right back from the living room, and we were sitting back there.

Q Well, now, did the defendant ring a bell when he came to your home?

A When he came to the door I was there in the kitchen. When he came to the door I asked him to come on back.

Q Well, he did come back?

A Sure.

Q Well, now, did anyone else come after the defendant came to your home in the next hour or so?

A No one.

Q What did the defendant do upon his arrival at your home this particular evening?

A Well, he came on back and had a beer or so, and then afterward went on upstairs.

Q Did what?

A After he had the beer or so, he went on upstairs.

Q Well, now, when he went upstairs where was Mrs. Spriggs, if you know?

A She and the two children, the older children, were getting dinner in the basement in her kitchen.

Q Did you see her when she went to the basement? (23)

A I did.

Q And about how long after Mrs. Spriggs had gone to the basement was it before the defendant went upstairs?

A Well, now, you asked me just I would say about 20 minutes. He just landlady said to you, but as a result of your conversation with your landlady did you do anything and if so what?

A I took her to Children's Hospital.

Q Was she treated at Children's Hospital?

A No.

Q As a result of that -- they didn't treat her at the Children's Hospital -- what did you do then?

A Took her back to D. C. General and talked to the policeman on duty, as I was advised, and he called the sex squad detectives. (11)

Q Did there come a time when the members of the sex squad or some member of the sex squad came to your apartment at 1211 13th Street?

A Yes.

Q Was the defendant there then?

A Yes.

Q Did you hear the members of the sex squad question the defendant?

A Yes.

Q What did they say to the defendant?

A They asked him what had happened to the baby, why he had blood on his shirt, and I don't remember what else.

Q Well, what did the defendant say?

(11)
A He said that he had just picked the baby up, that he had gotten blood all over his shirt, and she was bleeding when he went in the room, and he didn't know what had happened to her.

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BY MR. FAUNTLEROY:

Q Now, Mrs. Spriggs, I think you said you had known Charles Plummer for about a year and a half; that is correct, isn't it?

A Yes.

Q And the offense took place on June 18, I believe, 1954?

A Yes.

Q Now, how long had you known Charles Plummer prior to June 18, 1954?

A About two months.

Q Now, will you tell us, please, just what relationship was between you and Charles Plummer?

A He was my boy friend.

Q Now, being your boy friend, did he stay with you at night?

A Sometimes.

Q Did there come a time when you and Charles Plummer began living (13) together, sharing the same bed and living in the same apartment?

A Yes.

Q And when was that?

A About a month before.

Q Before this occurred?

A Before this happened, yes.

Q And will you tell the members of the jury just how Charles Plummer treated your children? I think you had three children at that time.

A Yes. He treated them like a father would. He didn't mistreat them, as far as I knew anything about it.

Q As a matter of fact, he was very kind to them; was he not?

A Yes.

Q Now, in this month prior to the happening of this unfortunate incident when you were living with Charles Plummer, you had a satisfactory sexual relation with him; is that correct?

A Yes.

Q Now, there came a time when you went downstairs and you left little Maria upstairs, the eleven-month old child. Will you tell us, please, who (14) was on the first floor?

(14)
A My landlord, Mr. Lattner, his wife, and three of their friends, the two Richardson brothers and one of their wives.

Q Now, did you stop to talk with them at this time when you went down to the kitchen?

A No.

Q Did you see Charles Plummer there at that time?

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Q Now, will you tell us just what the Lattners were doing at that time?

A They were playing records and drinking.

Q What were they drinking?

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A Yes.

Q In other words, they were having sort of a little party in this room; is that correct?

A Yes, I guess so.

Q And will you tell us just about what time of day this party started?

A I don't know what time it started, but I got there at about 8:15 and they were there then.

Q Now, you were there earlier in the day; is that correct?

A Yes, I was there before dinner. I had gone out to the store at (15) about 6:30 or so, I believe.

Q Now, at that time they were still having a party there, weren't they?

A No, not when I left they weren't?

Q They had earlier that afternoon?

A I don't recall.

Q In other words, you really don't remember?

A Not before -- not before, I don't remember earlier.

Q Now, when you were up on the second floor attending to your little Maria could you hear the music?

A Yes.

Q In other words, it was pretty loud, wasn't it?

A Well, not necessarily because the room where the thing was was directly under my bedroom and therefore it made it easier for me to hear the music.

Q You are not keeping your voice up.

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A All right.

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(Mr. Fauntleroy, defense counsel, drew diagram on blackboard.)

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Q This is the front of the house here (indicating). Would you say this (indicating) is Mr. Lattner's bedroom?

A Yes.

Q And this (indicating) would be the toilet; is that correct?

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Q And how about this room (indicating)?

A That was the living room.

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(Witness resumed stand.)

BY MR. FAUNTLEROY:

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A She was in the bedroom.

Q When you say the bedroom, that is this room here (indicating)?

A Yes.

Q And on the first floor, the room where the party was going on was directly under this room (indicating); is that correct?

A That is right.

Q And you could hear the phonograph playing all the time?

A Yes.

Q Now, when you went downstairs to go to the kitchen you left little Maria in the bedroom; is that right?

A That is right.

Q Now, will you tell us just where the kitchen is in the house that you went to to prepare the dinner?

A It is in the basement.

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A It was under my bedroom and the living room.

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Q And the living room. In other words, it would be in the basement under these two rooms (indicating); is that right?

A That is right.

Q Did you hear, Mrs. Spriggs, the defendant here call you?

A No, I didn't.

Q When you were down in the kitchen could you hear the music playing?

A Yes.

Q Now, tell me this: When the policemen came to examine Charles Plummer, did they examine anybody else or did they question anybody else with reference to what had happened?

A No. (19)

Q Now, actually, the fact that you were in the basement and you were cooking dinner and there was a sort of party going on on the first floor, you couldn't have heard Charles Plummer if he had called you anyway, could you?

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BY MR. BLACKWELL:

Q State your full name, please, sir.

A Doyle G. Lattner.

Q Where do you live?

A 1211 - 18th Street, Northeast.

Q Were you living at 1211 - 18th Street, Northeast, on the 18th of June of last year?

A I were, sir.

Q Do you know the defendant, Charles H. Plummer, Jr.?

A I do, sir.

Q How long have you known him?

A Well, just I would say a couple of months before this 18th.

Q Do you know Mrs. Spriggs, Mrs. Barbara L. Spriggs? (21)

A I do, sir.

Q Was she a tenant of yours on June 18 of last year?

A She was, sir.

Q What section of the house did she occupy, sir?

A She occupied upstairs, apartment two, upstairs, and a kitchen downstairs in the basement.

Q Directing your attention to June 18 of last year, did you have occasion to see the defendant in your home on that particular evening?

A I did, sir.

Q About what time did you see him there or did he come there, sir?

A Well, somewhere between I would say 7:30 and 8:00 o'clock, 8:15, or something like that.

Q Where were you at the time of his coming?

A I was on the first floor.

Q What were you doing if anything? (21)

A Well, I had some friends visiting and we was having a few beers and sitting around.

Q Do you remember when the defendant came to your home?

A I do, sir.

Q How do you remember?

A Well, I was there in the kitchen as he came to the door and I (22)
invited him back to have a beer, so he did.

Q Now, where did this drinking of the beer take place, in the kitchen or what part?

A No, right in the porch room, in the television room, where I have kind of a den right back from the living room, and we were sitting back there.

Q Well, now, did the defendant ring a bell when he came to your home?

A When he came to the door I was there in the kitchen. When he came to the door I asked him to come on back.

Q Well, he did come back?

A Sure.

Q Well, now, did anyone else come after the defendant came to your home in the next hour or so?

A No one.

Q What did the defendant do upon his arrival at your home this particular evening?

A Well, he came on back and had a beer or so, and then afterward went on upstairs.

Q Did what?

A After he had the beer or so, he went on upstairs.

Q Well, now, when he went upstairs where was Mrs. Spriggs, if you know?

A She and the two children, the older children, were getting dinner in the basement in her kitchen.

Q Did you see her when she went to the basement? (23)

A I did.

Q And about how long after Mrs. Spriggs had gone to the basement was it before the defendant went upstairs?

A Well, it was a matter of just I would say about 20 minutes. He just drank some beer. He didn't stay any longer. He just went on upstairs.

Q Do you recall when Mrs. Spriggs left the basement and went back upstairs?

A Well, yes, it was approximately 40 minutes after he had went up (23) there.

Q Did I understand you correctly to say that Mrs. Spriggs went upstairs approximately 40 minutes after the defendant had gone up?

A Sure.

Q Now, during the time the defendant was -- after the defendant went upstairs, did there come a time when he returned to your place to your television room prior to the time Mrs. Spriggs went upstairs?

A You say did he return?

Q Before she went up?

A No, he did not.

Q Now, did anyone else come in from the time the defendant went upstairs until the time Mrs. Spriggs --

A No one, no one.

Q Had anyone come in would you have seen him? (24)

A Oh, sure, definitely.

THE COURT: Did I understand you to say you had some friends there with you?

THE WITNESS: They was already there, yes.

THE COURT: Did they continue to stay there?

THE WITNESS: Yes, sir, they was there.

THE COURT: How many were there?

THE WITNESS: Just two brothers and one of their wives.

THE COURT: What was that?

THE WITNESS: Two brothers.

THE COURT: Three altogether?

THE WITNESS: Yes.

THE COURT: They stayed right with you the whole time when the defendant went upstairs?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

BY MR. BLACKWELL:

Q Now, did these guests of yours, these three people you mentioned, leave the room any time after the defendant left?

A They did not, sir.

Q Did they leave any time after you saw Mrs. Spriggs go down to the kitchen until the time she returned?

A They did not, sir.

(25)

Q After the defendant went upstairs did you hear him call Mrs. Spriggs?

A No, sir.

Q Had he called Mrs. Spriggs or anyone, would you have heard him?

A Yes, sir, certainly.

Q Why would you have heard him? What was your position with respect to the room upstairs?

A Well, see, at the top of the steps, you see, in other words, where we were sitting was right up over where he was at in her apartment, but we was right under there. He would have had to call from the top of the steps where it would have been right next to the living room where we were sitting at, and nothing in the world would have kept us from hearing.

Q You were there from the time Mrs. Spriggs went down until the time she returned?

A I was.

CROSS EXAMINATION

BY MR. FAUNTLEROY:

Q You were the landlord of the premises where Mrs. Spriggs lived on June 18, 1954?

A Yes, sir.

(26)

Q Would you say that that rough sketch on the board there is a reasonable facsimile of the arrangement of your house?

THE COURT: There seems to be no dispute about it. I wonder if it is conceded that it is? There seems to be no dispute about it.

MR. BLACKWELL: If Your Honor please, now, the defendant has drawn it and Mrs. Spriggs is of the opinion that it reasonably is, however I think this landlord would be in a better position to definitely state.

THE COURT: Well, if he is disputing it, go ahead.

THE WITNESS: That is a pretty good description of it. It looks pretty good, but there is only one thing back here where it says at the top, "bath."

MR. FAUNTLEROY: Right here (indicating); that is, "bed."

THE COURT: Bedroom.

MR. FAUNTLEROY: I suppose that he is referring to that as being her bedroom upstairs.

MR. BLACKWELL: That is right.

THE WITNESS: Well, that is a drawing of the upstairs then?

MR. FAUNTLEROY: This is the second floor.

THE WITNESS: That is the second floor. Oh, yes, well, that is (27)
right for the second floor.

MR. FAUNTLEROY: I wonder would you mind stepping down and drawing a
first floor plan of your house?

THE COURT: We will take a recess while we are doing that.

BY MR. FAUNTLEROY:

Q Now, Mr. Lattner, this small diagram is a floor plan of the first
floor of your house; is that correct?

A It is, sir.

Q And will you tell the Court and members of the jury just where your
friends were drinking?

A Right there where it says, 'TV' in the TV room.

Q Now, will you tell us just where you were sitting? (28)

A Well, I was sitting somewhere along here (indicating). I was sitting
right along there (indicating).

Q Will you explain where the other two gentlemen, the Richardson
brothers, were sitting?

A I have a sofa bed runs right alongside the wall right across here
(indicating).

Q And they were sitting there; is that correct?

A That is right.

Q And where were you sitting?

A I was sitting right here on a chair right here (indicating).

Q And from time to time you would have to get up in order to serve
beer; is that right?

A Oh, yes.

Q And where would you go to get this beer?

A Right here (indicating), right in this little door here to the porch.
I have a refrigerator on that porch, on that little porch. (29)

Q And also from time to time you would have to get up and change these
records you were playing; is that right?

A Oh, yes, once in awhile.

Q All right, that is all. You may return to the stand.

(Witness resumes witness stand.)

Now, on June 18, 1954, Charles Plummer came into the house?

A Yes.

Q And you invited him back to your TV room where you were having a
party?

A Surely.

(29)

Q Then when he said he was going upstairs, of course you didn't question it?

A No.

Q Because he had been living upstairs?

A That is right, he had been there all along.

Q Now, will you tell us just about when this little party of yours started?

A Well, not too long because the Richardson brothers and I -- we all work together and we had worked that day and they came in and we don't get off until 4:30, and they had been home and came back to my house since we got off from work, and that happened around 8:00 o'clock so I guess we had been (30) around there about an hour -- 40 minutes, a hour, or something like that.

Q Did you hear the defendant call down that something had happened upstairs?

A I did not, sir.

Q You did not hear?

A I didn't hear.

Q Do you remember when Mrs. Spriggs came downstairs?

A I do.

Q Did she stop in to have a beer with you?

A No, she went right on downstairs, she and the two children.

Q Did she have any conversation with the group that was in your TV room?

A Not at all. She just went right on down.

Q Tell me, Mr. Lattner, when Mrs. Spriggs came downstairs, how did you happen to see her?

A I happened to be seated into the door, you see. There is a door leading from each room, see, and right where it says, 'kitchen there, you see, the steps goes down to her kitchen, out of my kitchen right down under these stairs. And at the time she and the children came down, I happened to be -- I don't know whether I got up to get a glass or another beer at the box or what, but I do recall her going down.

MR. FAUNTLEROY: That is all, Your Honor

(Witness withdrew from stand.)

was called as a witness on behalf of the Government and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q State your name and occupation, please.

A I am George Hajjar, internist physician at D. C. General Hospital.

Q Doctor, do you have with you the record of the examination of one Maria N. Simpson, 11 months of age on the 18th day of June, 1954?

A Yes, sir, I do.

Q Were those records brought in response to a subpoena issued from this court?

A Yes, sir, they are.

Q Are those records kept in the regular course of business?

A Yes, sir.

MR. BLACKWELL: If Your Honor please, I understand defense (32)
counsel waives the questions and is ready to concede the authenticity of these records.

MR. FAUNTLEROY: That is right, Your Honor.

THE COURT: Very well.

BY MR. BLACKWELL:

Q Will you read from the record the result of the examination of Maria N. Simpson?

THE COURT: You had better offer them in evidence and have them received before he reads them.

MR. BLACKWELL: Your Honor, at this time the Government wishes to request that these be marked as Government's Exhibit Number 1 for identification.

(D. C. General Hospital record
of examination of Maria N.
Simpson was marked Government's
Exhibit No. 1 for identification)

THE COURT: And you are offering it in evidence at this time?

MR. BLACKWELL: I wish to offer the record.

THE COURT: Any objection?

MR. FAUNTLEROY: No objection.

THE COURT: Received.

(D. C. General Hospital record of examination of Maria N. Simpson, previously marked Government's Exhibit No. 1 for identification, was received in evidence.

BY MR. BLACKWELL:

(33)

Q Doctor, will you be so kind as to read from that record to the members of the jury the results of the examination of Maria N. Simpson on the date in question?

A Yes, sir.

A physical examination was done on the 18th of June, 1954, at 10:45 p. m. at the District of Columbia General Hospital. The purpose of the examination was to determine injuries to this Maria Simpson and, if possible, the cause of same.

The physical examination in general was within normal limits except for examination of the vaginal area of the child. The examination of the vagina showed fresh vaginal bleeding, and interior examination revealed a laceration of the posterior wall of the vagina.

THE COURT: Would you speak up a little louder?

BY MR. BLACKWELL:

Q Will you read that once again about what you found, sir, a little louder please, Doctor Hajjar?

A The general physical examination was normal except for examination of the vagina, which revealed a laceration on the posterior wall of the vagina.

THE COURT: And fresh bleeding.

THE WITNESS: And fresh vaginal bleeding.

MR. BLACKWELL: May we approach the bench, Your Honor?

(At the bench:)

(34)

MR. BLACKWELL: I take it that this doctor is probably not qualified to testify as to the cause of this. It would be purely speculative.

THE COURT: I would think so.

MR. BLACKWELL: I shall not pursue the examination.

THE COURT: I would think so.

MR. FAUNTLEROY: I thought we were going to stipulate to that record, the whole record being introduced.

MR. BLACKWELL: What else do you want?

THE COURT: Does the record show something else?

MR. FAUNTLEROY: It is all in evidence?

(34)

THE COURT: Yes, the whole report is in evidence. Which part do you have in mind?

MR. FAUNTLEROY: The whole part, "cause undetermined,"

MR. BLACKWELL: Very well, I will bring that out.

(In open court:)

BY MR. BLACKWELL:

Q Doctor, does your record state any cause of this laceration of the vagina?

A According to our record, the impression at the time of the examination was that this was a laceration of the vaginal wall. cause undetermined.

MR. BLACKWELL: Thank you, Doctor. You may inquire.

MR. FAUNTLEROY: I have no questions, Your Honor.

(35)

THE COURT: You may be excused, Doctor.

WALTER E. GROVE

was called as a witness on behalf of the Government and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q State your full name and assignment, Sergeant, please.

A Walter E. Grove, detective sergeant, assigned to the detective bureau of the general assignment squad, Metropolitan Police.

Q Now, directing your attention to June 18 of last year, Sergeant, to which squad were you assigned?

A To the sex squad of the detective bureau.

Q On that particular day, that is June 18, did you have occasion to see the defendant, Charles H. Plummer?

A I believe it was the morning of the 19th that I first saw the defendant.

Q Very well. And how did you come to see the defendant?

A About 3:00 a. m. on the 19th I was called to the D. C. General Hospital to investigate a case and found Mrs. Simpson and her daughter there and started the case from that point. (36)

Q Did there come a time when you had occasion to question the defendant relative to the condition of one Maria N. Simpson, 11 months old?

A I did.

Q When and where was that?

A That was at the home of Mrs. Spriggs -- I believe I previously said "Simpson," which was the child's name -- the home of Mrs. Spriggs at the 1100 block of 18th Street, Northeast -- I am sorry. may I correct that. the 1200 block -- 1211 18th Street, Northeast.

Q Will you tell His Honor and the members of the jury what you said to the defendant and just what the defendant said to you concerning the condition of the Simpson girl?

A After interviewing Mrs. Spriggs again at her home and Mr. and Mrs. Lattner, who had the house at the 18th Street address and with whom Mrs. Spriggs lived, and questioning them as to the different things that happened during the evening and in the early morning hours of the 19th, I then had the defendant Plummer brought down to the living room of the Lattner part of the house on the first floor and I talked with him to some length, asking what time he arrived at the house. He told me he did not know the exact time. (37) And as to his actions and as to where he went when he came in, he said that he had stopped at the Lattners for a few minutes and as near as he could come to time on that, I believe it was 10 or 15 minutes, he said.

And then he had gone to the second floor and he did not find Mrs. Spriggs there but that he had been drinking beer and he thought he would lay down upstairs and wait for her. I don't know that he mentioned he knew where Mrs. Spriggs was in the house, but he said that he was waiting for her.

I then asked him as to the condition of the second floor bedroom as to the lighting. He stated he did not know whether the light was on. And as to the door, he said he didn't know whether it was open or closed, Mrs. Spriggs' bedroom.

And that after a time he found that she was not there in the room. And I think the next statement he made was that he had picked up the baby and called her -- called for her.

I questioned further on those points that I have already given and some others, and he as to the light he then said that he thought the light was off and the door closed when he got there. As to what the child was clothed in when he picked it up, he said he didn't remember.

I went back to a point where the complainant had advised us that (38) the --

THE WITNESS: The complainant had advised me that when she first met the defendant up at the second floor hallway that he was washing his hands and that he had said to her --

THE WITNESS: That he had said to her, "I called you when I found the baby like this." And she had said and later said that she received no call from him.

At that time I also checked to see if Mr. and Mrs. Latner, who were also still present there during most of the questioning in their living room, if they had heard -- (39)

BY MR. BLACKWELL:

Q Now, the defendant was present at that time?

A That is correct -- if they had heard of the defendant calling for Mrs. Spriggs and they said they had not.

At a later time the defendant told us that he did not call down, and changed his story to that effect.

I talked with him further on the removal of clothing from the baby. He said first he did not know what the baby had on, whether it was naked or had clothing, but later in the interrogation, conversation, he stated that he had removed two safety pins -- I should say he removed safety pins. I don't know as he said two. There were two that were on there originally, as to the complainant's story. One of the pins was found in the bed and one on a dresser beside the bed.

He said he had also removed a T-shirt and a diaper from the child because they had blood on them. I asked the defendant if he had gotten any blood on him and he said only on his jacket or sweater.

I questioned the defendant later at police headquarters, sending him to the central cell block at about 5:00 a. m. the same morning.

At about 6:00 o'clock I went to the cell block, brought him up to the identification bureau and asked him if he would submit to a test for blood on his clothing and on his person, and he said that he wouldn't. (40)

The test was made in my presence, and after the conclusion of the test I asked him questions as to results of that test or what showed from the results of that test. One question I put to him was how blood was found on his hand and fingers. He stated that he didn't know. I reminded him that he previously had told me that he didn't get blood on his hands.

And a test was also made as to the defendant's penis and I asked him regarding that and he stated that he had had relations with Mrs. Spriggs several days before and that is how he accounted for it, if it were there.

Subsequently I turned the defendant over to other members of the sex squad and there was a detective assigned, and I had previously notified the

complainant, Mrs. Spriggs, to be in the office for a statement in the morn-(40)
ing.

CROSS EXAMINATION

(41)

BY MR. FAUNTLEROY:

Q Sergeant, do you remember when you questioned Charles Plummer about what had happened -- don't you recall him saying that the child had started crying and he had picked the baby up?

A He possibly might have answered in that way during some of the questioning.

Q He further indicated to you, if your recollection will recall, that that was the reason that he had the blood on his hands and his jacket?

A As to the jacket, yes. He gave me no reason as to how it was on his hands.

Q But he indicated that he had picked the little child up; isn't that right?

A He did, yes.

Q And when you took him down to headquarters to ask him whether he would submit to this blood test, he didn't make any objection, did he? He (42)
volunteered?

A No, he did not. He made no objection.

MR. FAUNTLEROY: That is all.

JAMES T. MILLER

was called as a witness on behalf of the Government and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q State your full name and assignment, Officer, please.

A Private James T. Miller. I am assigned to the identification bureau of the Metropolitan Police Department.

Q Were you so assigned on June 18 of last year?

A Yes, sir, I was.

Q Now, Officer, what were your duties in connection with the identification bureau? What did they consist of?

A Well, I fingerprint prisoners and photograph them. I develop photographs. I take them. I run preliminary blood tests to determine the presence of blood. And I examine questioned documents with the idea of determining who the writer was, or if there have been forgeries or whatever in writings. (43)

Q Now, as to a preliminary blood test, have you had occasion to testify in court on previous occasions relative to preliminary blood tests for the purpose of determining the presence of blood on a person or object?

A Yes, sir, I have.

MR. BLACKWELL: Do you concede the officer's qualification, Mr. Fauntleroy?

MR. FAUNTLEROY: Examine him further.

MR. BLACKWELL: Very well, I will proceed.

BY MR. BLACKWELL:

Q In which courts have you testified?

A I testified in the Ira Wilson case before Judge Kronheim. That was in May of 1954.

Q What preparation have you had in this connection with preliminary examinations of blood?

A Actually, in the line of chemistry, I have only studied high school chemistry. I have never had college chemistry. The tests that we run are prepared by Lieutenant Bohannon, who is a chemist for the Police Department. He prepares these blood tests by giving all the reagents that are necessary, measured out in appropriate amounts and set up in capsules. And each of the blood tests is prepared from these pre-measured reagents that have been set up by this chemist.

All that we do is to measure out or take these capsules according(44) to directions, mix them with the proper solvent, and conduct the tests. And only to note -- our only duty actually would be then to note the reactions that these tests give.

We actually have nothing to do with the measuring out or the compounding of any of these tests. They are all standard tests and they are all set up by the chemist.

Q What type of test would you use, sir. How many kinds do you have?

A Well, we just have three different tests. The most popular and most widely known is the benzidine test used for many years, and there are the malachite green test and the luminal test. These were developed out in the University of California by Doctor Kirk and his staff out in the University of California and some of the other scientists who worked with him on several of these tests. They have been used for a number of years and have been widely used in various universities and subjected to very rigid tests to determine if there are any things that would work against these tests other than blood, and

they have found in that connection they give a positive reaction only to blood, (44)
that is the use of all three of these tests which we use together. There is no
known substance or reagent of any kind that gives a positive test to all three
of these tests that we have with the exception of blood.

MR. FAUNTLEROY: I was wondering if I couldn't ask him one pre- (45)
liminary question.

THE COURT: All right, go ahead.

BY MR. FAUNTLEROY:

Q Officer, could you tell me whether or not you have had any formal
training that would qualify you to analyze these blood tests?

A I don't understand what you mean by "analyze these blood tests."

Q Well, I understood from your statement that the chemist sets these
tests up and you analyze them, the results of them.

A No, I said that the chemist had set up the tests. He measures out all
the reagents that go into the tests, and these are packaged by him in small
capsules. Those capsules are set up in certain amounts and all that I do,
actually, is to put these pre-measured capsules in a certain amount of solvent,
see that they are dissolved, and then to apply these things and to note the
results.

Now, I don't analyze them in any way. I only note if a reaction
occurs, and if the reaction does occur, that is indicative that there has been
a positive reaction and it indicates the presence of blood. Other than that, I
don't analyze them in any way.

Q Now, you say if certain conditions exist then it is a positive (46)
reaction. Someone told you, is that right, or you have been instructed as to
that?

A Well, I have been instructed on that by Lieutenant Bohannon, yes, and
by another officer named Singleton, who is also a chemist. But I have also read
accounts of these various tests and how they are mixed, how they are set up,
what the theory behind them is, and what reaction should occur, articles by
Doctor Kirk and his staff out in California.

Q And you say the extent of your educational field is you studied
chemistry in high school?

A In the chemistry field alone. I have a degree but not in chemistry.

MR. FAUNTLEROY: May we approach the bench?

MR. BLACKWELL: May I ask this question before we approach the bench,
Your Honor?

BY MR. BLACKWELL:

(46)

Q There is also a form of chemical test known as phenol thaline?

A Phenol thaline, yes, there is.

Q Do you have occasion to use that in most of your analyses?

A We have used that on occasion, yes.

(At the bench:)

MR. FAUNTLEROY: I don't like, Your Honor, to tie up a trial unnecessarily, but I am not satisfied --

THE COURT: I don't think he is qualified to give results either. (47)

MR. BLACKWELL: He was just going to testify as to what he saw.

THE COURT: What do you mean what he saw?

MR. BLACKWELL: When this substance --

THE COURT: Unless you follow it up, it won't mean anything. It won't mean a thing to have him testify unless you can have the other officer.

MR. BLACKWELL: You mean the chemist?

THE COURT: One of these two officers who have been mentioned and who know about these tests or can tell about the conclusion. This man is not qualified to do it.

MR. BLACKWELL: I concede, Your Honor, that he hasn't had much experience.

THE COURT: He isn't qualified at all. He concedes that he isn't.

You see, he cannot give the results of that test without being an expert and knowing about it.

Where are these officers?

MR. BLACKWELL: Well, the only thing they can testify is they did fill the --

THE COURT: Well, from their expert knowledge they can testify as to what the results signify. That is what you are after.

MR. BLACKWELL: They were not present.

(48)

THE COURT: They do not have to be present.

He can testify he saw red or whatever it is. He can testify the actual facts, but drawing conclusions from those facts requires expert knowledge.

MR. BLACKWELL: He can testify what he saw and then I will follow it up.

THE COURT: Well, yes, that is perfectly all right.

(In open court:)

BY MR. BLACKWELL:

(48)

Q Did there come a time, Officer, when you had an occasion to run a preliminary blood test on defendant Charles H. Plummer?

A Yes, sir, there was,

Q When and where was that?

A That was on June 19, 1954, at 7:45 in the evening in the identification bureau of the Metropolitan Police Department, 300 Indiana Avenue, Northwest, this city.

Q Now, what if anything did your examination show as to the presence of blood? Strike that.

What did your examination show, if anything, as to whether there was a positive reaction of blood from the defendant?

MR. FAUNTLEROY: I object to that, Your Honor.

THE COURT: I don't think he is qualified. That isn't what I indicated to you at the bench.

(49)

You can testify just what you saw without giving any conclusions about it.

BY MR. BLACKWELL:

Q By the way, what type of examination did you administer to the defendant?

A I ran three different tests to indicate the presence of blood.

MR. FAUNTLEROY: I object to anything as to what it indicated.

THE COURT: I think that may stand. Go ahead.

THE WITNESS: And these three tests were the benzedine, luminal, and the malachite green test.

BY MR. BLACKWELL:

Q What did you observe as a result of this test? Just what did you observe as a result of this test?

A In all --

MR. FAUNTLEROY: If Your Honor please, what the witness observed as a result of this test -- I still contend he would not be competent to testify.

THE COURT: He may state just what he observed in the making of the test. Go ahead.

THE WITNESS: There were three things that were examined in this test and they were each examined with three different sets of chemical reagents. In other words, they were subjected to three tests.

(50)

One was a yellow vest and on that vest there was a green reaction to the benzedine test, a green reaction to the malachite green test, and a fluorescence in the luminal test. Now, those are positive reactions.

The hands of plumber were tested and there was a green test on the benzedine, green on the malachite green, and fluorescence on the luminal test, which indicates it is a positive reaction.

And the penis or the private parts of Plummer were examined and there was a green reaction on the benzedine test, which is the most sensitive of the three, and no reaction on the other two tests, which are less sensitive, and which would have been a negative reaction.

BY MR. BLACKWELL:

Q Which test was this last one?

A That was the negative on the luminal and malachite green and positive on the benzedine, a positive reaction on the penis of Plummer.

THE COURT: I assume you are going to follow it up, counsel, by these so-called experts' testimony as to what the green result signifies and the fluorescence result signifies?

MR. BLACKWELL: That is my intention.

THE COURT: This witness is not qualified for the results; only (51) what he actually saw.

MR. BLACKWELL: Very well, Your Honor.

You may inquire.

CROSS EXAMINATION

BY MR. FAUNTLEROY:

Q Do you have any notes of your examination?

A Yes, I have.

Q May I see them?

(Witness hands notes to Mr. Fauntleroy.)

MR. FAUNTLEROY: That is all, Your Honor.

JOSEPH B. BOHANNAN

was called as a witness on behalf of the Government and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q State your full name and assignment, Lieutenant, please.

A Joseph B. Bohannan. I am in charge of the identification bureau.

Q How long have you been in charge of the identification bureau, Lieutenant?

A About three years.

Q What do your duties consist of as being in charge of that bureau?

A Well, the supervision of all the activities that are performed there.

Q What are some of the activities performed by that bureau?

A It is a long list.

Q I will ask you this: Does your bureau handle preliminary tests for the purpose of determining the positive reaction of blood?

A Yes, we do.

Q Will you give us some information as to your scholastic background that qualifies you for your present duties?

A Well, I received a Bachelor of Science Degree from Georgetown University in 1939 and a Masters Degree in 1943.

I have been running these blood tests for the Police Department (53) since 1943.

Q About how many blood tests have you run during that time that you would be able to estimate?

A I haven't counted them.

Q I mean on an average, a year or a month?

A Well, I guess the best way to explain the number of tests that are run is that on possibly one serious case we may run as many as 300 blood tests on one serious case alone. We run plenty of them. I personally have run thousands of them.

Q Did you ever have occasion to testify in court showing the results or giving your opinion as to the results of these blood tests?

A I am sorry, but I don't have the specific information here with me.

THE COURT: No, just whether you have at any time testified?

THE WITNESS: Yes, I have.

THE COURT: I think the foundation is sufficient.

MR. FAUNTLEROY: One question, Your Honor. He stated he had two degrees, one in 1939 —

THE COURT: In science, he said.

THE WITNESS: Master of Science, and I specialized in biological chemistry.

THE COURT: Go ahead. The foundation is sufficient. (54)

BY MR. BLACKWELL:

(54)

Q Now, in your bureau do you have one Private Miller working under you, Private James T. Miller?

A Yes, sir, he is a technician in my bureau.

Q Are you acquainted with the various types of tests used to determine the positive reaction of blood on an object or on a person?

A I didn't quite get that.

Q Are you acquainted --

A Am I acquainted with them?

Q Yes.

A Yes, sir.

Q Now, Lieutenant, I would like to ask you in your bureau over there what is the process of running these tests? I mean is there any substance prepared in advance for the purpose of running the benzedine test?

A Yes, sir, there are various reagents used to make up the solution which is used to run the tests, using benzedine as one of the reagents.

Q Is that also true in the malachite green?

A It is, yes.

Q And luminal, also?

A Yes, sir.

Q And do you supervise that preparation, sir?

A Yes, sir.

(55)

Q All right, now, assuming that this substance which you prepare for the purpose of running the benzedine test, and the benzedine test is run on the hands, clothing, and the private parts or the penis of an individual, if that reaction, chemical reaction, was green what would be your opinion as to the presence of blood?

A That would be a positive reaction for blood.

Q And would that also be true in the case of the other two tests, malachite green and luminal -- we will say in the case of malachite green, would the reaction be green?

A It develops a green color, yes, sir.

Q And if that developed a green color, in your opinion what would that be?

A That would again be a positive reaction for blood.

Q All right, now, in the case of the test, the luminal test, if there is a reaction of fluorescence, what would be your opinion as to that?

A That would also be an indication of the presence of blood. (55)

MR. BLACKWELL: Thank you very much, Officer. You may inquire.

MR. FAUNTLEROY: No questions, Your Honor.

HARVEY G. MATTINGLY (56)

was called as a witness on behalf of the Government and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q State your full name and assignment, Officer, please.

A Detective Harvey G. Mattingly, attached to the sex squad, Metropolitan Police Department, Washington, D. C.

Q Detective Mattingly, were you so attached to the sex squad on June 18 and 19 of last year?

A I was.

Q Did there come a time when you had an occasion to talk to the defendant, Charles H. Plummer, Jr.?

A I did.

Q When did you first have an opportunity to talk to Mr. Plummer?

A It was on the morning of June 19. I was working day work and when I came in the office Sergeant Grove turned this case over to me for further investigation.

Q As a result of your conversation with the defendant, will you tell His Honor and these ladies and gentlemen of the jury what you said to him and what he said to you?

A I talked to the defendant about the alleged act on the child and he denied that he had touched the child in any way. So I asked him how he (57) accounted for this blood on his clothing and his hands and on his penis, and he said he had gone upstairs and saw the child laying in bed with the diaper off and bleeding down at the privates. So he picked the child up and looked at her and laid it back down and went in the bathroom and washed his hands.

I asked him why he didn't call the child's mother and first he said he did call her, but later on he said he didn't call her.

So then I asked him what did he do to the child and he said he didn't do nothing to her. I said, "Well, then, how do you account for blood on your penis?" Then he said he probably went in the bathroom and touched his penis while his hands were bloody.

MR. BLACKWELL: Thank you, Sergeant. You may inquire, sir.

BY MR. FAUNTLEROY:

Q Officer, did you make notes of the conversation that you had with Charles Plummer?

A We got him in the jacket here, yes, sir, and also at the confrontation.

Q Did you make notes at the time you had the conversation with Charles Plummer?

A Not in the note book.

Q In other words, you went back to the headquarters and made notes?(58)

A This was at headquarters when I talked to him, the sex squad office.

Q How soon after you talked to him did you make these notes you are referring to?

A Well, while he was confronted I made certain notes as to what he replied. Later it was transcribed into the case report.

Q Do you have notes, rough notes, that were made when you talked with Charles Plummer?

A No, I don't. I only make rough notes when I am on the scene of the crime. I don't make them in the office in my notebook.

Q Well, now, the notes that you say you made when you talked with Charles Plummer at headquarters and then you said you subsequently transcribed them; is that right?

A That is right.

Q Do you have those first set of notes?

A I wouldn't think so. We usually throw them away when we write it up.

Q Charles Plummer never admitted that he had molested this girl?

A He denied it all the way.

Q And he also indicated to you that he had called the mother of the(59) child when he found it in that condition, didn't he?

A That is correct. Then later when we had the complaining witness, Mr. Lattner, confront him and said he didn't hear him call, and he said he never did call.

Q Lattner said he didn't hear him call?

A That is correct.

Q Now, are you certain about this particular point?

A What is that?

Q Are you certain about this particular point that you are testifying now?

A What point?

Q You just got through testifying that Charles Plummer denied -- he changed his mind and said he hadn't called the mother?

A That is right.

Q You are certain of that?

A That is correct.

Q Are they in your notes that you have there?

A He said that he did not notify the child's mother of the apparent injury but went to the bathroom to wash himself. This last statement was made after it was called to his attention that no one else in the house heard him call down to the child's mother.

Q In your routine questioning did you find out what the other parties in the house were doing at that time? (60)

A Yes, I did.

Q And will you tell us just what they said?

A Who.

Q Tell us what Lattner said he was doing at that time?

A If I remember correctly, I think Lattner was in the front room watching television. The mother of the child had gone down in the basement to prepare her supper.

Q Now, let me refresh your memory just a little bit: Didn't Lattner tell you he was in the back room, the TV room, playing a phonograph record?

A If I remember correctly, he told me he was watching the television.

Q Are you certain of that?

A No, I am not certain. I said if I remember correctly he told me he was watching television.

Q In other words, you don't remember him telling you he was in the back room playing the phonograph record?

A No, I don't.

MR. FAUNTLEROY: That is all.

(At the bench:)

(61)

MR. FAUNTLEROY: Your Honor, at this time I would like to move for a directed verdict of acquittal on the basis, one, that no crime has been proven to have been committed. There is no testimony here that the child had been

(61)

sexually molested. The only evidence that is in the case is that blood was on the defendant. The body of the crime has not been proven.

THE COURT: Well, there is more than that. You overlooked part of the testimony, not only the blood, but the doctor in the hospital record said the vagina was torn; isn't that right?

MR. FAUNTLEROY: Bleeding.

THE COURT: And it was torn -- laceration of the posterior wall.

MR. FAUNTLEROY: But he also states cause undetermined.

THE COURT: Oh, yes, sure, they wouldn't know.

MR. FAUNTLEROY: I mean if the doctor --

THE COURT: They wouldn't know what the tearing came from. Of course not, they wouldn't. They couldn't tell.

MR. FAUNTLEROY: They could -- (62)

THE COURT: How could they tell?

MR. FAUNTLEROY: He could say whether it was in his opinion because of any internal bleeding that came on spontaneously.

THE COURT: I will deny your motion.

CHARLES H. PLUMMER,

the defendant, was called as a witness in his own behalf and, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FAUNTLEROY:

Q State your full name.

A Charles H. Plummer.

Q Talk loud enough so the ladies and gentlemen of the jury can hear you.

A Charles H. Plummer.

Q Now, directing your attention back to the day of June 18, 1954, you were living with one Barbara Spriggs at that time?

A I was.

Q On 18th Street, that is correct, isn't it?

A That is right.

Q Talk louder now. You have to keep your voice up. (63)

A I was.

Q Now, on that particular day, what time did you get home in the evening?

A I got in about 4:15.

Q And now will you tell the members of the jury what you did from 4:15 on?

A Well, I came in and I went on upstairs. Barbara was laying across the bed, that is Mrs. Spriggs was laying across the bed. She looked awful funny. So I asked her what was wrong and she wouldn't tell me. So I went off back downstairs. I guessed what was wrong. I went off back downstairs and I had a conversation with Mr. Lattner and asked him what was wrong with Barbara, and he acted like he didn't want to tell me. So I asked him, I said, "Did you make another pass at her?" He told me to mind my business. He was drunk.

I told him if he didn't stop making passes at her I would let his wife know about it. He told me as long as we were here in the house and we weren't married, he would continue to make them. That is what happened then.

Q Now, did there come a time when you left the premises?

A What?

Q Did there come a time when you left the premises?

A Yes.

(64)

Q When you left this house?

A Barbara and I and a friend of mine and two of the kids left. She went to the grocery store and the friend of mine and I stopped in a beer garden. We stayed there and she came back and got keys from me and went on home. Well, I got back there about 8:30 and Lattner called me for a drink. So I figured he wanted to argue some more and I was just about ready to quit arguing, put up an argument. I walked on back. He had his friends in there and all were sitting in there drinking. He offered me a can of beer so I took it.

Then I stayed down there for about ten minutes and I went on upstairs. After I seen he wasn't going to argue, I went upstairs and laid down across the foot of the bed. When I went in, the lights were out and the child was crying. I didn't pay it any mind because I didn't know what for it was crying.

I laid down across the bed. She was crying in such a way that it was -- make you think something was wrong. I got on up and picked her up to try to pacify her, stop her from crying. She wouldn't stop so I went over and turned the lights on and I came back to the crib to try to find her bottle. That is when I saw the blood on it.

From then on I was just thinking about what the average person would be thinking -- get that blood off me before somebody thinks I did it. (65)

Q About how many beers had you had that day, including the one you had with Mr. Lattner?

A Yes, well, we had about two pitchers of beer between about four of us in the beer garden. The beer cost 50 cents a pitcher.

Q Now, do you remember talking to Detective Mattingly, the officer who just preceded you on the stand? Do you remember having a conversation with him?

A Yes, I had a conversation with the detective.

Q Mattingly, the one that preceded you on the stand?

A Yes.

Q Do you remember having a conversation with him?

A Yes, I do.

Q Now, do you remember what you told Detective Mattingly?

A Yes, I remember.

Q Now, will you tell the ladies and gentlemen of the jury?

A He asked me did I commit the crime. I told him no. He asked me had I called the baby's mother. I told him yes I called her several times, but I don't know whether she heard me or not.

Q Did you at any time tell him -- change that?

A No.

Q Now, so that these ladies and gentlemen of the jury might understand, (66) did you sexually molest Barbara on the day in question, that is June 18?

A How is that?

Q Did you sexually molest Barbara?

A No, it was the night before.

Q No, maybe you don't understand.

MR. BLACKWELL: He answered the question.

THE COURT: You are asking about Barbara.

BY MR. FAUNTLEROY:

Q Barbara is the little baby.

A No.

Q Now, we will get back to Mrs. Spriggs.

THE COURT: Is Barbara the name of the little baby, or Maria?

MR. FAUNTLEROY: I am sorry.

THE COURT: You are asking about the mother, you see.

MR. FAUNTLEROY: Thank you, Your Honor.

BY MR. FAUNTLEROY:

Q As to the little eleven-month old baby, did you attempt any sexual molestation of the little child?

A No.

Q Did you fall asleep in the room?

(66)

A How is that?

Q When you went up stairs, I think you testified that you lay down; (67)
is that right?

A Yes, I laid across the foot of the bed.

Q Did you fall asleep or were you awake?

A Well, not exactly what you call asleep because the time when I came in the kid was crying. She was crying when I came in and so I laid down across the foot of the bed. The child, by her continuing to cry and the way she was crying, I just wakened up and I got right on up and picked her up.

Q Now, will you explain to the Court and jury just how this blood -- it has been testified that you had some on your shirt and some on your hands -- how it got on you?

A Well, when I picked the child up from the crib, blood was all over, all over her body. I picked her up and held her up against me and after I tried to stop her from crying, I couldn't stop it so I put it back. Before I put it back, I tried to find where she was bleeding from. Then I put her back in the crib. That is how I got blood on my hands and on my clothes.

Q Now, you have heard the testimony about blood on your penis?

A Yes.

Q Did you examine your penis to find out whether there was any on it?

A No, I didn't but the officers did. (68)

Q After you put the baby back down and went into the bathroom, what did you do then?

A Well, after I put the baby back down, I called the baby's mother. I called her several times and then I went out into the hall and I called her. But after she didn't answer so I went on in the toilet and washed the blood on my hands because I didn't want to be running around with all the blood over me.

MR. FAUNTLEROY: That is all.

CROSS EXAMINATION

BY MR. BLACKWELL:

Q Mr. Plummer, I believe you testified --

A Would you mind speaking a little louder? I can't hear you.

Q I believe you testified that you came home in the afternoon on June 18; is that correct?

A That is right.

Q What time did you get home in the afternoon?

A I got home about 8:30.

(68)

Q About 8:30 at night?

A At night. That was the second time.

Q What time did you get home first in the afternoon?

A Oh, about 4:15.

Q Now, when you came in you say you went upstairs and Mrs. Spriggs (69) was lying across the bed; is that correct?

A That is correct.

Q And you inquired about what was the matter and she gave you no reply?

A That is right.

Q Then you went back downstairs and you saw Mr. Lattner down there?

A That is right.

Q And you asked him if he had made another pass at Mrs. Spriggs?

A That is right.

Q And I believe he stated that you are not married to her and "I will make a pass any time I see fit," is that correct?

A That is right.

Q What did you say then?

A I told him if he didn't stop it I would let his wife know.

Q Did you let his wife know?

A No, I didn't get a chance to let his wife know.

Q What did you do?

A I went back upstairs and told Mrs. Spriggs she should move because I didn't want no trouble about the man.

Q What did she say?

A She said she would.

Q And what did you do then?

(70)

A Well, I was a little aroused so my friend came up there.

Q Who was this friend?

A His name was David Higgins.

Q David Higgins?

A David Higgins.

Q Where does he live?

A He lives on Miags Place, Northeast.

Q What is the address?

A I don't know his address.

Q Is he here today?

A No, he isn't here today.

(70)

Q What did you and your friend, David Higgins, do?

A Him, I, Barbara, and the two kids went on out.

Q Where did you go?

A She went to the grocery store and I went in the beer garden.

Q How long did you remain at the beer garden?

A I been in the beer garden up until about 8:25.

Q Then what did you do? You came back to 1211 18th Street?

A Was I living there?

Q You came back from the beer garden?

A Yes, I came back from the beer garden.

Q Did David Higgins return with you?

(71)

A Yes, he walked up to the door and then he turned around and went on back.

Q How many beers did you have in the beer garden?

A About two pitchers. Two pitchers and one can, which I would rate about five altogether if you want to break it down.

Q Now, when you returned to 1211, did you see Mr. Lattner?

A Did I see him, yes.

Q Where was he?

A Sitting in the chair with his back toward the front door, too.

Q He saw you when he arrived; did he not?

A How is that?

Q He saw you when you came in. didn't he?

A He looked around and peeked around across in the corner.

Q And he called you back?

A Yes.

Q You say you went back?

A Yes.

Q You say you expected an argument?

A Yes, I was looking for one.

Q And you were already going, you testified on direct --

A Yes, I was ready for one.

(72)

Q What did he say to you then?

A Then he asked me to have a drink.

Q Did you have one?

A Yes, I had a can of beer.

Q Who else was there?

(72)

A Who else was there?

Q Yes.

A Well, there was his wife, him, and the two Richardson boys.

Q Did you see Mrs. Spriggs when you were there talking to him?

A No.

Q Did you hear her go down the steps to the kitchen?

A No, I didn't.

Q Then there came a time when you went upstairs; is that correct?

A That is right.

Q And when you went upstairs, was the light on or off?

A The light was off.

Q Pardon me.

A Off.

Q You turned the lights on?

A I turned them on after I picked the child up from the crib. (73)

Q Well, now, you turned the lights on when you went up to the room; did you not?

A No.

Q What time was this, approximately?

A Well, it was about 8:40.

Q About 8:00 o'clock?

A About 8:40.

Q 8:40?

A Yes.

Q Well, you went right in and laid down without turning the lights on?

A Yes.

Q Were you on the same bed with the child?

A No, the kid was in the crib.

Q The kid was in the crib, so how long did you lie down before you were disturbed by the kid crying?

A I can't say.

Q Estimate?

A I can't say.

Q Just give us a rough idea?

A Well, I would say about five minutes, maybe ten.

Q Five minutes or ten minutes.

Now, you had been lying on the bed for five or ten minutes when (73)
the kid started crying?

A The kid was crying when I came in, (74)

Q The kid was crying when you went in?

A That is right.

Q And you never turned the light on?

A No, I didn't turn the light on until after I picked the kid up from
the crib.

Q Now, let me get this straight: Isn't it a fact that when you first
went in that room you laid down ten minutes before you picked the kid up?

A You just asked me that and I told you I picked the kid up afterward,
after I laid on the bed.

Q You laid on the bed about ten minutes?

A I said approximately about five or ten; not definitely ten.

Q Very well, sir, approximately five or ten minutes.

A Yes.

Q In other words, although the kid was crying in the dark when you went
in, you laid down for five or ten minutes before you picked that child up; is
that correct?

A Yes.

Q And when you picked that child up it was in the dark; is that right?

A That is right.

Q Well, now, how long after that was it before you turned the light on?

A Well, I guess it had been -- let's see -- it could have been (75)
about a minute.

Q And when you turned the light on, what did you observe if anything?
Did you observe the kid bleeding?

A I observed the kid bleeding.

Q Where was the kid bleeding from?

A I don't know. I looked for it but I couldn't find it.

Q Well, where did you see the blood?

A Yes, I seen the blood.

Q Where was the blood coming from?

A I don't know. She had blood all over her.

Q The blood was all over --

A I can't hear you.

Q The blood was all over on her face also, or just her body?

A I can't say that.

(75)

Q You can't say that blood was on her face?

A I can't say blood was on her face. It could have been.

Q You said it was on her body?

A I know blood was on her body.

Q Was the kid dressed at that time?

A How is that?

Q Was the kid clothed at that time?

A Well, no, she wasn't.

Q Did she have anything on?

(76)

A No, she didn't have anything.

Q Did you make a statement that you took her clothes off?

A What?

Q Did you ever make a statement you took her clothes off after you found her?

A No.

Q So the child was actually nude when you picked her up?

A She didn't have no clothes on.

Q Could you tell that in the dark or did you observe that after you turned the lights on?

A I couldn't tell in the dark so I had to see it after the lights came on.

Q You had her in your arms, did you not?

A How is that?

Q You had her in your arms before you turned the lights on?

A I had her in my arms before I turned the lights on.

Q You couldn't tell whether she was nude, could you?

A You don't expect me to see in the dark, do you?

Q Couldn't you tell by the feel whether or not the kid was nude or had clothes on, a diaper?

A I guess you can but I didn't.

Q So you didn't know whether she was clothed or nude before you turned that light on; is that right? (77)

A That is right.

Q Now, when you discovered her in that condition, what did you do?

A I called the mother and after I didn't get no answer from her, I started washing the blood from off my hands.

Q How long did you remain up in that room after you went up before (77) the mother came up?

A She showed up about a minute or maybe five minutes after I started to call her.

Q Well, did you hear Mr. Lattner testify that the mother went downstairs just a short while before you came in?

A How was that?

Q Did you hear Mr. Lattner testify that the mother went downstairs just a short while before you came in?

A I heard him.

Q Didn't you hear him testify that you were upstairs about 40 minutes before the mother came up?

A I heard that too.

Q Is that true?

A No.

Q How did you feel? Were you excited when you saw this 11-month old baby bleeding?

A Well, the only one thing I could think of at the time was getting (78) the blood off of me, off my hands; that is all.

Q You were primarily concerned with getting that blood off you: is that your testimony?

A All I could think was get the blood off my hands.

Q So you didn't call the mother; is that right?

A I can't hear you. Speak louder.

Q You didn't call the mother; is that right?

A I called the mother.

Q How many times?

A I called her about three times.

Q Didn't you think that you should have gone down to get the mother under those circumstances?

A Would you run all around the house with blood over you?

Q So when the mother came up and asked you what had happened to the kid, what did you say?

A I told her there was something wrong with the baby, she was bleeding, and to go and see about it.

Q Now, you have explained how the blood got on your hands and your clothes?

A I picked the baby up from the crib. (78)

Q I say you have explained that; have you not?

A Yes.

Q Have you explained how the blood had come to be on your privates?(79)

A That is easy.

Q That is easy?

A Yes.

Q Explain that, Mr. Plummer, since you haven't explained it. Explain that to us how the blood come to be on your privates.

A I used the toilet.

Q What?

A I used the toilet.

Q And that is how the blood come to be on your privates?

A That is right. If you have any blood on you and you touch your privates and if you haven't been circumcised it will come off.

Q How do you know that?

A Well, I looked it up.

Q When did you look it up?

A In Lexington, Kentucky.

Q Was that since you were charged with this crime?

A Well, yes.

Q Very well, sir, now, did you give another reason to the officers when they were interrogating you concerning this case as to the presence of blood on your privates?

A A possibility. (80)

Q What other possibility could there have been?

A It could have come from somebody such as Mrs. Spriggs.

Q As a matter of fact, you told them that it did come from Mrs. Spriggs, didn't you?

A I never said definitely that it did. I said it may could have.

Q Well, you never said definitely that it came --

A No, I didn't say definitely.

Q You say it could have come from her?

A It could have come from her.

Q And when did you tell them that you had last had sexual relations?

A How is that?

Q When did you tell the officers that you last had sexual relations with Mrs. Spriggs? (80)

A The night before.

Q Would you say then as a result of the sexual relations, because of her physical condition at that time, you may have gotten blood on your privates?

A Well, yes, it could have come from that.

Q I mean her physical condition at that time was such that the blood could have gotten on your privates?

A Possibly, I would have thought that. I may have said that.

Q Had you ever had any trouble with Mr. Lattner prior to this evening when you spoke to him about making a pass at Mrs. Spriggs? (81)

A I didn't hear you.

Q Had you ever had any trouble with Mr. Lattner before the 18th of June about making a pass at Mrs. Spriggs?

A Yes, he had made one at her Thursday night.

Q What did you say to him then?

A I didn't say anything to him.

Q Now, isn't it a fact when you came in you sat around and enjoyed a couple of beers with Mr. Lattner there and the Richardsons?

A What is that?

Q Isn't it a fact when you came in around about 8:00 o'clock on the 18th of June that you sat back in the television room and had an enjoyable evening there -- I mean had an enjoyable 15 or 20 minutes drinking beer?

A If you mean a can of beer, yes, I did.

Q There were no hard words said at that time?

A You don't expect for a man to say anything or me to say any hard words to the man while his wife was there, or any of his company. Anything I got to say to him, I say to him personally.

Q How old are you, Mr. Plummer?

A 29.

Q How old? (82)

A 29.

Q Are you the same George Henry Plummer who was convicted of house-breaking on the 11th of August, 1945?

A Am I being tried for that again?

THE COURT: Just answer the question.

THE WITNESS: Yes.

(82)

BY MR. BLACKWELL:

Q Are you the same George Plummer who was convicted on November 2, 1944, for housebreaking?

A I was.

Q Are you the same George H. Plummer, Jr., who was convicted on August 25, 1946?

A I was.

Q Or plead guilty to two charges of housebreaking?

A Housebreaking?

Q Yes.

A I was.

Q Are you the same George H. Plummer who was convicted on September 9, 1953, for theft from a vehicle?

A I was.

Q I would like to inquire as to whether or not you are the same George H. Plummer who on August 11, 1943, was convicted at Hyattsville for a violation of the taking of an automobile?

A I was.

MR. BLACKWELL: No further questions.

(83)

MR. FAUNTLEROY: No further questions.

THE COURT: You may step down.

BARBARA LOUISE SPRIGGS

was recalled as a witness in rebuttal on behalf of the Government and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q Mrs. Spriggs, you have already been sworn. I wish to ask you a few additional questions. You heard the testimony of the defendant, Charles H. Plummer, in this case concerning Mr. Lattner having made certain passes at you; is that correct?

A Yes.

Q Did he make passes at you?

(84)

A Yes.

Q Was there any argument on Mr. Lattner's part on June 18 between defendant Plummer?

A Not in my presence.

Q You have heard the defendant testify that he could have gotten (84) blood on his privates as a result of sexual relations with you the evening prior to June 18. I would like to ask you whether or not you were in such physical condition at that time that if you had had sexual relations would there have been any blood?

A No.

Q In other words, I would like to ask you when was the last time that you menstruated prior to June 18?

A As far as I can remember, it was about two weeks.

MR. BLACKWELL: Thank you. You may inquire.

CROSS EXAMINATION

BY MR. FAUNTLEROY:

Q Now, Mrs. Spriggs, it has been a little while since June 18, 1954. I mean are you reasonably certain of what you say?

A Yes.

Q There is no question in your mind?

A No.

Q Do you remember when this particular period occurred in July of (85) 1954?

A No, I don't remember exactly when.

THE COURT: Speak up.

THE WITNESS: I don't remember exactly when it was.

BY MR. FAUNTLEROY:

Q Would you know when it occurred in August of 1954?

A No.

Q In other words, you don't know about the subsequent months to July, do you? You are not sure?

A I knew then but I don't know now.

Q Well, now, I would just like to ask you this question: How could you be so certain about July and not be so certain about the subsequent months?

A Well, last year it was fresh in my mind and I used to keep a calendar and therefore I knew. But since then I have thrown my calendar away and I can't remember last year.

Q Well, you kept a calendar for August?

A For the whole year.

Q October, November, December, 1954?

A The whole year, yes.

Q That is right?

(85)

A Yes.

Q But you don't remember about August, September, October, November, and December of 1954?

A I don't remember now, no.

(86)

Q But you say you are not certain after July?

A I remember from my statement that I made to the detective and the prosecuting attorney.

Q Did you sign any statement?

A Yes.

Q In your statement to the police did you make such an assertion?

A Yes, I told them when it was but I don't remember now.

Q Well, did they refresh your recollection?

A I read my statement over, part of it.

MR. FAUNTLEROY: That is all.

REDIRECT EXAMINATION

BY MR. BLACKWELL:

Q Is it your testimony, Mrs. Spriggs, that shortly after this crime that you were questioned by the members of the sex squad concerning whether or not -- questioned as to when you had last menstruated?

A Yes.

Q And that was on or about the 18th or 19th of June: was it not?

A When I talked to them?

Q Yes.

A Yes, it was the 19th.

MR. BLACKWELL: Thank you, I have no further questions.

(87)

MR. FAUNTLEROY: While we are here, Your Honor, just for the sake of the record, I would like to renew that motion that I made.

THE COURT: The motion will be denied.

There are no special charges I can see except the statute of indecent liberties and prior convictions. That is all except the regular charge. It is a question of fact and one on circumstantial evidence. I had better give one on circumstantial evidence. You are relying on that in this case. All right.

CHARGE TO THE JURY

(110)

THE COURT: (Youngdahl, J) Ladies and gentlemen of the jury, the time has come now when it is incumbent upon the Court to charge the jury as to the law that governs the rights of the parties to this case. You must accept the

law just as the Court gives it to you, regardless of any opinions that (110) you may have as to what the law is or ought to be. On the other hand, you are the exclusive judges of the facts in this case and it is your sole prerogative to determine what the facts are as indicated from the evidence here, and apply the law that the Court gives to you to those facts and bring in a just and fair verdict.

Now, because you are the exclusive judges of the facts, you have the responsibility of determining the weight and credibility that you will give to the witnesses who have been examined and testified before you. You will consider the manner and conduct and demeanor of the witness, his memory or lack of memory. I want to say when I use the pronoun, "his," I of course mean his or her. You will consider the faculty or lack of faculty of each witness to see and hear those things about which he has testified; the ability or lack (111) of ability of each witness to convey to you through the medium of words what he has seen or heard; the probability or improbability of the truth of the testimony given by the witnesses; any bias or prejudice shown by any witness which might have influenced his judgment or colored his testimony; the reasonableness or unreasonableness of the story that has been told; and all those other factors, including interest in the outcome of the case, which you as intelligent and experienced people take into consideration when you determine the difference between truth and untruth or truth and half truth.

Now, there has been evidence here that the defendant has been convicted a number of times on felony charges. The fact that a defendant has a criminal record has no bearing on the question of guilt or innocence as to the charges on which he is being tried. The law, however, admits a criminal record as to any person who takes the witness stand for the purpose of assisting the jury in determining whether or not to believe the witness. Any fact that may tend to show that a witness may not be a truth-telling individual is admissible in respect to such a witness whether the witness is the defendant or anyone else. Consequently, you may consider the defendant's criminal record not as bearing on the question of guilt or innocence in this case, because the (112) defendant's guilt or innocence must be established by the evidence irrespective of what his past may be. But you may consider his criminal record for the purpose and as a help in determining whether he was a trustworthy witness when he took the witness stand, and whether his testimony should be believed.

If you find that any witness has in this trial wilfully testified falsely or corruptly as to any material fact concerning which he could not

doubt for which you can give some reason to yourself and not just some (114) speculation and conjecture. If after an impartial consideration of all the evidence you can say to yourself that you are not satisfied of the defendant's guilt, then you have a reasonable doubt.

If the evidence is as consistent with innocence as with guilt, or if the Government has merely proved that there is a strong probability that the act charged is true, then the Government has not sustained this burden. But on the other hand, if after such impartial consideration of all the evidence you can truthfully and candidly say to yourselves that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters pertaining to your own affairs in life, then you have no reasonable doubt.

Now, the section of the Code under which this indictment has been brought reads as follows:

"Any person who shall take or attempt to take any immoral, improper or indecent liberties with any child of either sex under the age of sixteen years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires either of such person or of (115) such child, or of both such person and such child, or who shall commit or attempt to commit any lewd or lascivious act upon or with the body or any part or member thereof of such child with the intent of arousing, appealing to, or gratifying the lust or passion or sexual desires either of such person or of such child, or of both, shall be guilty of a violation of that section of the Code."

Now, briefly, the Government contends that on June 18, 1954, at 1211 18th Street, Northeast, in the District of Columbia in violation of that section of the Code, as spelled out in the indictment, the defendant took indecent liberties with Maria N. Simpson, a female child of the age of eleven months.

The Government contends that the child was left by the mother in the crib, clothes with a polo shirt, under shirt, and diaper when the mother went to the basement for some purpose. The mother came up from the basement and found the baby naked, blood all over, and bleeding from the vagina. She saw the defendant in the bathroom washing his hands. The defendant admitted to the mother picking up the baby, but he said he had gotten blood on his shirt and hands from doing that.

The Government contends that the defendant first told the officers that he called the mother, and later said he did not call to the mother. At first, according to the testimony of the officer, he said he didn't know what the baby had on, and later he said he removed the safety pins and said he also removed a T-shirt and a diaper because they had blood on them. (115) (116)

The Government has also produced evidence from the hospital records and the intern indicating when the baby was brought to the hospital and there was a laceration of the posterior wall and fresh bleeding from the vagina. And the Government has also had an expert on the stand to testify there was a positive reaction of blood from one of the tests that was made, as far as the defendant's private parts is concerned.

Now, the defendant denies attacking or abusing this child in any way whatever. He concedes that he was in the room. And he contends that the child was crying and that was the reason why he picked up the child. He said it was dark and he didn't discover until later that there was blood on it, and that is the reason he got blood on himself because the child had blood on it. And he doesn't know how the child happened to get the blood.

These in the main are the respective contentions of the parties, members of the jury.

You are admonished that the evidence of any oral confession or confessions made by the defendant, while he was under police custody, should be received with caution and scrutinized with care. (117)

Now, the Government relies upon circumstantial evidence in asking for a verdict of guilty in this case. In criminal cases there are two types of evidence. One is known as direct evidence and another type of evidence is known as circumstantial evidence. By direct evidence is meant evidence of an eye witness who saw the act perpetrated. There is no direct evidence, of course, of any sexual abuse of the child. It is difficult to secure direct evidence of acts of that kind because they generally are committed in secret where there are no eye witnesses around. At any rate, the Government has no direct evidence of the commission of the act claimed in this case.

The second type of evidence is circumstantial evidence. That is the evidence the Government presents to you and upon which it relies for a conviction. Circumstantial evidence consists of circumstances from which the defendant's guilt may be inferred by the jury.

One cannot say that either of the two types of evidence is more reliable or stronger than the other. An eye witness, for example, may make a

mistake in identifying a person whom he saw. His memory may be inaccurate (117) or he may intentionally fabricate a story. Circumstances, too, may lead to an erroneous inference. On the other hand, at times if circumstantial evi- (118) dence is sufficiently strong, it may be even more convincing than direct evidence because circumstances speak for themselves and if they are strong enough they may at times irresistibly lead to a definite conclusion.

The law permits conviction of a criminal offense on circumstantial evidence alone. In order, however, to justify a verdict of guilty on the basis of circumstantial evidence alone, the circumstantial evidence must be of such a degree and character as to point to the defendant's guilt, and also it must be inconsistent with the defendant's innocence. In fact, in order to justify a verdict of guilty on the basis of circumstantial evidence alone, such evidence must be inconsistent with any other theory except the theory of the defendant's guilt. If the circumstantial evidence is consistent with the defendant's guilt, but it is also consistent with the defendant's innocence, or in fact with any other theory except the theory of the defendant's guilt, then the defendant must be found not guilty.

Now, finally, members of the jury, you will consider this case in the light of the instructions that I have given to you, using the same practical approach, the same common sense and intelligence that you would use in determining any other important matter in your lives.

Your verdict must be unanimous. Upon reaching the jury room you will first select a foreman or forewoman who will preside over your deliberations in the jury room and speak for you when you return a verdict to this Court. Then you will reach a verdict without sympathy, passion, or prejudice and reach a verdict impartially without any emotion for one side or the other. (119)

A written verdict form is being submitted to you with a blank space for you to write in either the word "guilty," or the words "not guilty," as your verdict happens to be. Have your verdict signed by your foreman or forewoman, dated, and returned to this Court.

Is there anything further?

MR. BLACKWELL: The Government is satisfied, Your Honor.

MR. FAUNTLEROY: Satisfied.

THE COURT: Will you agree for the record that the jury may return a sealed verdict?

MR. BLACKWELL: Yes.

MR. FAUNTLEROY: Yes.

(Thereupon, at 11:20 a. m. the jury retired to the jury room to (119)
deliberate its verdict.)

FILED IN OPEN COURT (121)
JUL 6 1954
HARRY M. HULL, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Holding a Criminal Term

Grand Jury Impanelled May 3, 1954, Sworn in on May 4, 1954

The United States of America : Criminal No. 726-54
 : :
 : :
 : :
 : :
 : :
 : :
Charles H. Plummer, Jr. : Vio. 22 D.C.C. 3501a

The Grand Jury charges:

On or about June 18, 1954, within the District of Columbia, Charles H. Plummer, Jr., did take immoral, improper and indecent liberties with Maria N. Simpson, a female child under the age of sixteen years, that is, about eleven months of age, with intent of arousing, appealing to and gratifying the lust, passions and sexual desires of the said Charles H. Plummer, Jr.

/s/ Leo A. Rover

Attorney of the United States in
and for the District of Columbia

FILED (122)
JUL 9 1954
HARRY M. HULL, CLERK

PLEA OF DEFENDANT

On this 9th day of July, 1954, the defendant Charles H. Plummer, Jr., requests counsel be appointed by the Court, appearing in proper person ~~and by his attorney~~ which is so ordered, and, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The defendant is remanded to the District of Columbia Jail.

By direction of

James W. Morris

Presiding Judge

Criminal Court # 1

NOTE: REPORT TO NEW COURTHOUSE
Between Third Street and John Marshal Place
on Constitution Avenue, N.W., Courtroom # 8

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Spa ad Test - COURT OF CHIEF JUDGE LAWS

UNITED STATES OF AMERICA

VS.

Criminal Case No. 726-54

Charles E. Plummer

THE PRESIDENT OF THE UNITED STATES TO _____

Superintendent D.C. General Hospital. (Records of exam of Maria N. Simpson on
August 18, 1954 by Dr. A. Correllas)

You are hereby commanded to attend the said court on Wednesday, Sept 14, 1955
_____ at 9:00 o'clock A.M., to testify on behalf of the United
States, and not depart the court without leave of the Court or the District
Attorney.

Witness, The Honorable Bolitha J. Laws,
Chief Judge of said Court,
this _____ day of _____, A.D.,
19_____.

HARRY M. HULL, Clerk

By: Ireine B. Burroughs
Deputy Clerk

FILED (126)
OCT 7 1955

Harry M. Hull, Clerk

On this 6th day of October, 1955 came the attorney for the government and
the defendant appeared in person and¹ by counsel, John D. Fauntleroy, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of² not
guilty and a verdict of guilty of the offense of

Violation of Section 3501a, Title 22, D. C. Code
as charged³

and the court having asked the defendant whether he has anything to say why
judgment should not be pronounced, and no sufficient cause to the contrary being
shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.(126)

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of⁴

Three (3) years to Nine (9) years

~~IT IS ADJUDGED THAT~~

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Luther W. Youngdahl

United States District Judge.

FILED (128)

OCT 17 1955

NOTICE OF APPEAL

Harry M. Hull, Clerk

Name and address of appellant Charles H. Plummer, Jr.

Name and address of appellant's attorney John D. Fauntleroy,

1000 "U" Street, N. W., Washington, D. C.

Offense Violation Title 22, Section 3501 a, D. C. Code,(1951 Edition)

Concise statement of judgment or order, giving date, and any sentence on September 16th 1955, appellant was found guilty by jury of the above offense, and on October 6, 1955, appellant was sentenced by the Court to serve a term of from three to nine years.

Name of institution where now confined, if not on bail D. C. Jail.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

October 17, 1955

/s/ Charles H. Plummer

Date

Appellant

MEDICO LEGAL EXAMINATION

Report Blank

Date of examination 6/18/54 Hour 10:45 a.m.

Name: Maria Simpson Colored Age: 11 months

Address: 1211 - 18th Street, N. E.

Agency referring case: M.P.D.C. Sex Sqd.

Purpose of examination: To determine injuries and if possible, cause of same. If sexually molested?

History of Case:

Appearance of Patient: Fresh vaginal bleeding, small laceration posterior part of vagina.

Clothing, odor of breath, blood specks, bruises, etc.: None.

General physical exam.: Negative except for vaginal area.

Gynecological exam.: Fresh vaginal bleeding from laceration of posterior wall of vagina.

External genitals, appearance of hyman, vagina, cervix, adnexia, etc.: Normal as far as could be ascertained save for laceration of posterior vaginal wall.

Impression (state clearly): Laceration of vaginal wall. Cause undetermined.

Examining Physician: A. Carrellas, M.D.

Kahn

Special Reports:

United States Court of Appeals
for the
District of Columbia

FILED

Joseph D. Stewart
CLERK

BRIEF FOR APPELLANT

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 12,948

CHARLES H. PLUMMER, JR.

Appellant

vs.

UNITED STATES OF AMERICA

Appellee

**Appeal From The United States District Court
For The District of Columbia**

**John D. Fauntleroy
Masonic Building
1000 You Street, N. W.,
Washington 1, D. C.**

Attorney for Appellant.

QUESTION PRESENTED

No. 12,948

The question is whether there was sufficient evidence of the commission of a crime to go to the jury in this case in which the Court denied appellant's motion for a directed judgment of acquittal made at the close of the Government's and appellant's case.

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,948

CHARLES H. FLUMNER, JR.

Appellant

Vs.

UNITED STATES OF AMERICA

Appellee

Appeal From The United States District Court
For The District of Columbia

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from a judgment of conviction entered in the United States District Court for the District of Columbia for a violation of Title 22, Section 3801 (a) of the District of Columbia Code. This Court has jurisdiction of this appeal under Title 28, Section 1291, United States Code.

STATEMENT OF THE CASE

Appellant, defendant below, was arrested, indicted and tried for alleged violation of Title 22, Section 3801 (a), District of Columbia Code, commonly known as the "Miller Act". The jury returned a "Guilty" verdict on the indictment.

The record indicates that the appellant and a Mrs. Barbara Spriggs, mother of the infant, Maria N. Simpson, were living together at 1211 18th Street, N. E., Washington, D. C.

at the time the alleged offense is said to have occurred, and that appellant helped to support and care for Mrs. Spriggs' children, including the child in question, Maria N. Simpson, age 11 months.

On the day in question, June 18, 1954, the appellant entered the above premises, drank a can of beer on the first floor at the invitation of the landlord, Doyle G. Lattner, and then went upstairs to the bedroom he occupied with Mrs. Spriggs. The lights were off, and the appellant heard little Maria crying in her crib, but he proceeded to lie across the bed. Later when the baby continued to cry, appellant attempted to comfort the baby by picking the child up. When she did not stop crying, appellant called the mother, who did not respond to the call. A few minutes later the mother appeared and noticed that Maria was bleeding from her vagina. She also noticed that appellant was in the bathroom removing blood from his hands.

Mrs. Spriggs took Maria to the D. C. General Hospital where she was told to take the child back home as she would be alright. Later that evening the mother took the baby to Children's Hospital for treatment and later took the child back to the D. C. General Hospital where she talked with a policeman. Later two members of the Metropolitan Police Department's sex squad arrived at the home of the appellant and Mrs. Spriggs, questioned the appellant, and then arrested him.

In July of 1954 the appellant was indicted and on July 9, 1954 he entered a plea of not guilty. On September 16, 1955 the appellant was found guilty on the indictment and on October 6, 1955 he was sentenced to serve a period of three (3) to nine (9) years and is currently serving this sentence.

STATUTES, REGULATIONS AND RULES INVOLVED

Title 22, Section 3501 (a), District of Columbia Code.

(a) Any person who shall take, or attempt to take any immoral, improper or indecent liberties with any child of either sex, under the age of sixteen years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires, either of such person or of such child, or of both such person and such child, or who shall commit, or attempt to commit any lewd or lascivious act upon or with the body, or any part or member thereof, of such child, with the intent to arousing, appealing to, or gratifying the lust or passions or sexual desires, either of such person or of such child, or of both such person and such child shall be imprisoned in a penitentiary, not more than ten years.

STATEMENT OF POINTS

That the Government having failed to prove that a crime had been committed (corpus delicti), the Court should have granted appellant's motion for a directed verdict of acquittal.

SUMMARY OF ARGUMENT

That in order to sustain a conviction under Title 22, Section 3501 (a) of the District of Columbia Code, the Government must first prove the corpus delicti, namely, that the infant child was sexually molested and next the criminal means by which this was accomplished.

A close examination of the record will show that the corpus delicti was never proven, and that the appellant was tried by the jury for a non-existent crime.

-4-

ARGUMENT

The record shows that the Government introduced in evidence a medico-legal examination report, conducted by a Dr. A. Correllas, which was designated as Government's exhibit number 1 (J. App. 55). This report showed that Maria N. Simpson was examined on the 18th day of June 1954, and that there was evidence of fresh vaginal bleeding from laceration of posterior wall of vagina, the cause of which was undetermined.

The question then arises as to whether or not the above evidence was sufficient to prove that a crime had been committed. In the case of *United States v. Echeles*, 7th Cir., 222 F. 2d 144, the Court in commenting on the rule laid down in *Manning v. United States*, 215 F. 2d 945 said, "Most American Courts take the view that the phrase 'corpus delicti' includes first, the fact of an injury or a loss and secondly, the fact of somebody's criminality (in contrast e.g. to accident) as the cause of the injury or loss. The proof of these two elements involves the commission of a crime by somebody.

In the case of *Forte v. United States*, 88 App. D.C. 111, 94 F. 2d 236, on page 243 the Court said "The law is well settled that the corpus delicti includes not only the body or fact of the wrong, in the sense of the death in homicide or the loss of chattel in larceny, but also the criminal means by which the same came about."

Appellant says that a review of the entire record fails to disclose any evidence that Maria N. Simpson had been sexually molested or that any criminal means were used to accomplish same. Thus from an examination of the above cases, it can clearly be seen that the Government fell far short of proving the corpus delicti in this case. From the early be-

gaining of this country the rule has been that in a criminal case the prosecution must prove, First, that an offense has been committed, and secondly, that it was committed by the prisoner. United States v. Woods, Fed. Case No. 16,760, 4 Cranch c.c 484, 4 D. C. 484. This same rule was followed in the case of United States v. Searcy, 26 F. 435 where the Court held that in all trials for a crime the prosecution must prove to the satisfaction of the jury that a crime has been committed before the jury proceed to inquire as to who is the criminal.

The record thus shows that the appellant was tried and convicted for a non-existent crime.

The Government probably intends to rely on the fact that the appellant had blood on his hands and clothes, but the record will also show that the appellant explained this when he testified (Jt.App. 35) that he picked Maria N. Simpson up to attempt to comfort her. As to the presence of blood on the appellant's private parts, the appellant testified (Jt. App. 42) that if any blood was on his penis it might have come from his hands touching his privates, or that it might have been due to his relations with Barbara L. Spriggs, the mother of the infant. It is also interesting to note that three tests were made on the appellant's private parts with his consent, and that the benzedine test showed a positive reaction on the benzedine, and a negative reaction on the malachite green and luminal test. (Jt. App. 26). This tends to support the appellant's testimony that if any blood was on his private parts it must have come from his hands or from his relation with Barbara L. Spriggs. As to the testimony of James T. Miller on the above page that the benzedine test was the most sensitive, the trial Court had previously admonished this witness and the dis-

trist attorney that Pvt. Miller was not qualified to give expert opinions as to the tests, but could only give testimony as to what he saw (Jt. App. 24, 25, 26).

Thus it can be seen that the Government failed to prove the two elements of the corpus delicti, namely, that Maria M. Simpson had been sexually molested and next the means by which the alleged criminal act occurred.

At the conclusion of the Government's case, appellant moved for a directed verdict of acquittal, (Jt. App. 33) and later renewed this motion at the conclusion of the entire case (Jt. App. 45)

In the case of Cooper v. United States, 218 F. 2d 39, the Court on page 41 in stating the rule as to when a motion for a directed verdict of acquittal should be granted and adapting the rule in the case of Curley v. United States, 81 App. D. C. 389, 160 F. 2d 229, held that if the trial judge concludes upon the evidence there must be such a doubt in a reasonable mind, he must grant the motion, or, to state it another way, if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted. Since there was no evidence of a crime having been committed the jury should not have been allowed to speculate on whether or not a crime had been committed.

CONCLUSION

Appellant therefore most respectfully submits that on the basis of the entire evidence it was incumbent upon the

Trial Court to grant appellant's motion for a directed verdict of acquittal, and accordingly requests this Court to reverse the conviction entered below.

Respectfully submitted.

John D. Faulteroy
JOHN D. FAULTEROY
Attorney for Appellant
Masonic Building
1000 You Street, N. W.,
Washington 1, D. C.

I certify that a copy of the above
brief was personally served upon Lewis
Carrall, Esq., U.S. Attorney the
day of January 1956.

John D. Faulteroy

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED FEB 14 1956

Joseph W. Stewart

BRIEF FOR APPELLEE

CLERK

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12948

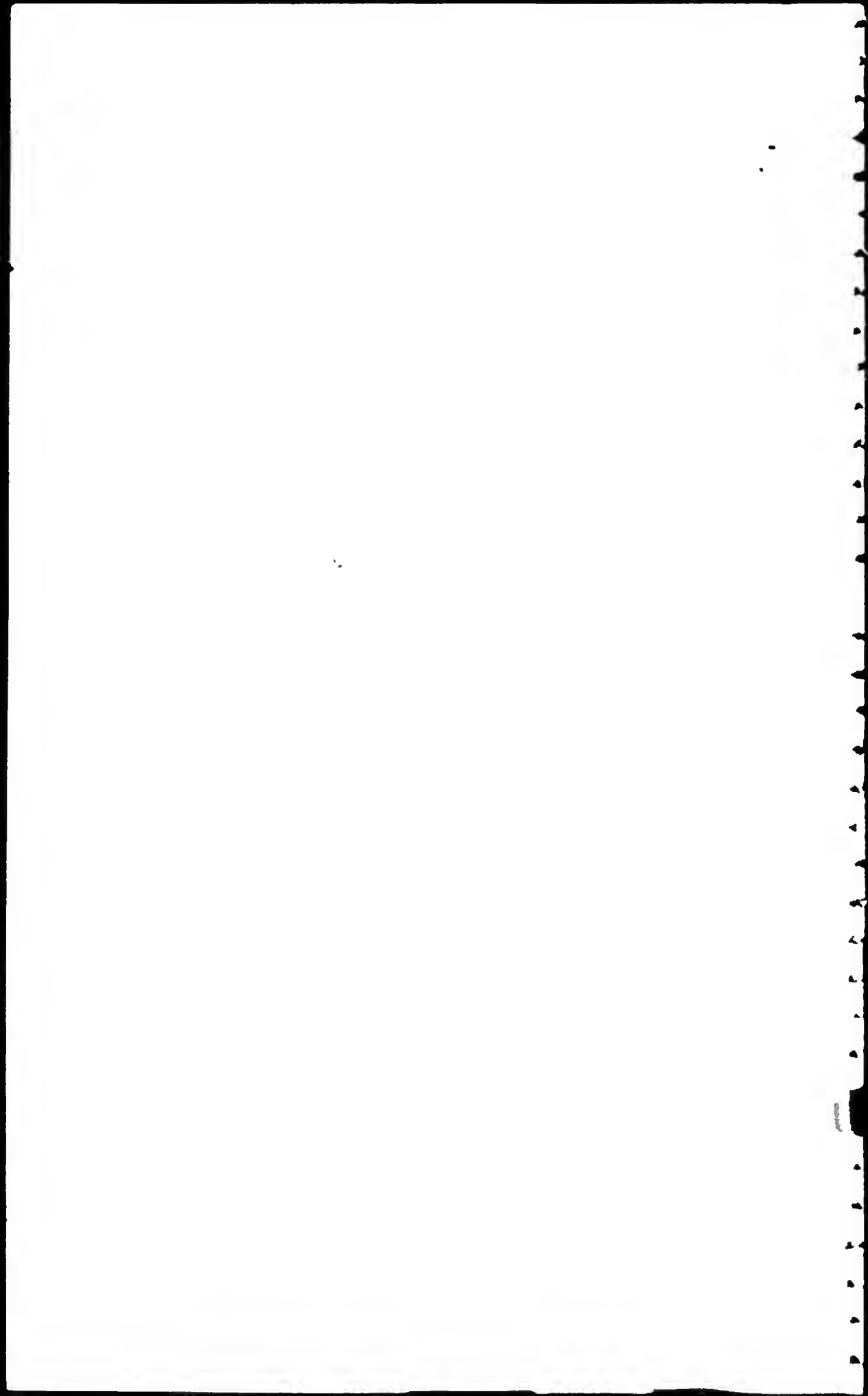
CHARLES H. PLUMMER, JR., APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

LEO A. ROVER,
United States Attorney.
LEWIS CARROLL,
JOEL D. BLACKWELL,
E. TILLMAN STIRLING,
Assistant United States Attorneys.



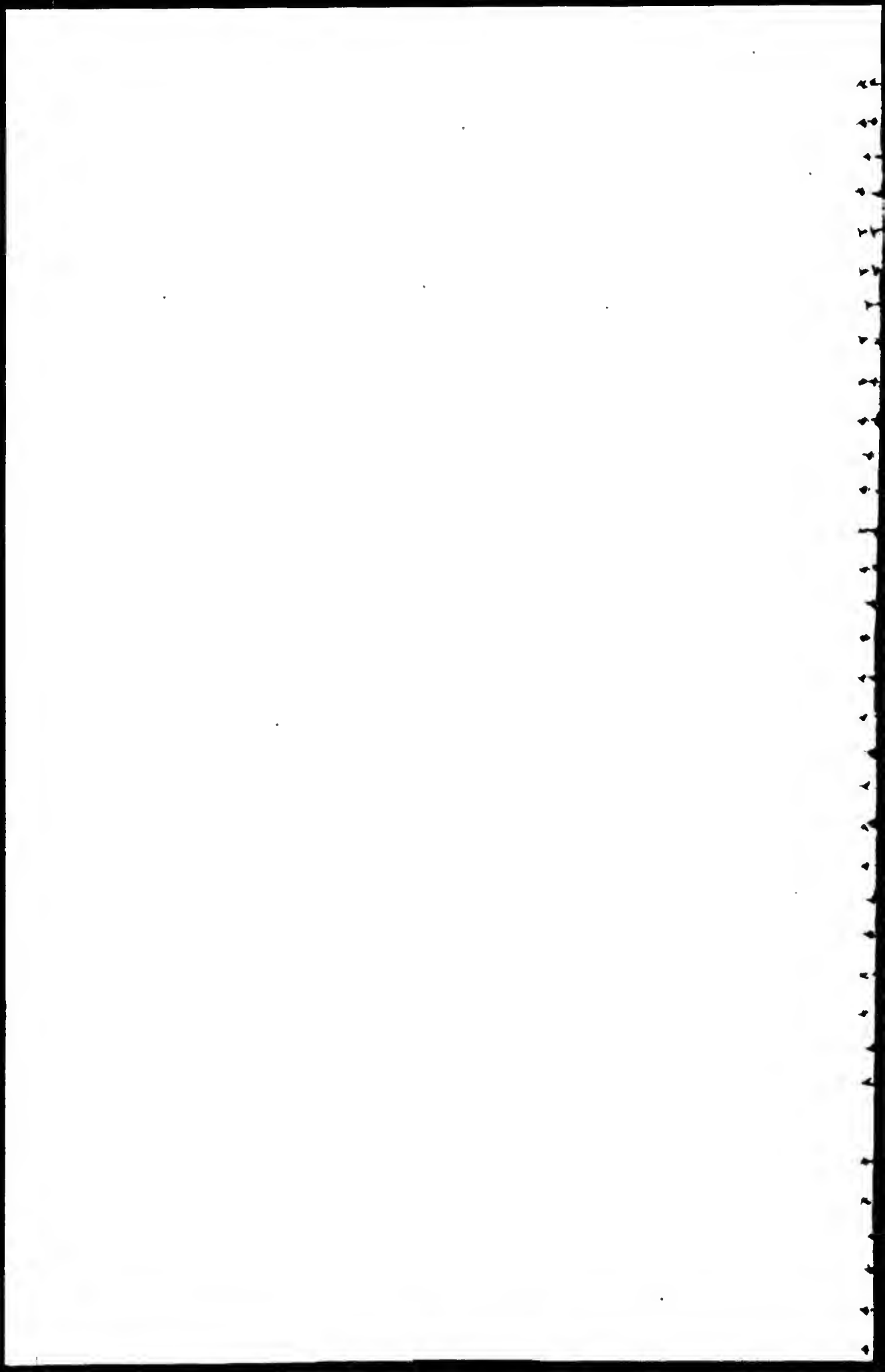
No. 12948

QUESTIONS PRESENTED

In a Miller Act case (indecent liberties) it was shown that an eleven month old female child clothed in diapers, under-shirt, and T-shirt, was left sleeping in her bedroom crib by her mother while the latter went to the basement to prepare the evening meal. Upon returning to the bedroom an hour later the mother found the crying baby completely naked in the crib, bleeding freely from the vagina. The appellant was seen in the adjoining bathroom with blood on his shirt washing blood off his hands. It later developed that the appellant had blood on his penis, and that the baby had a laceration of the posterior wall of the vagina. Therefore, in the opinion of the appellee the following question is presented:

Was there substantial evidence that a crime was committed.

(1)



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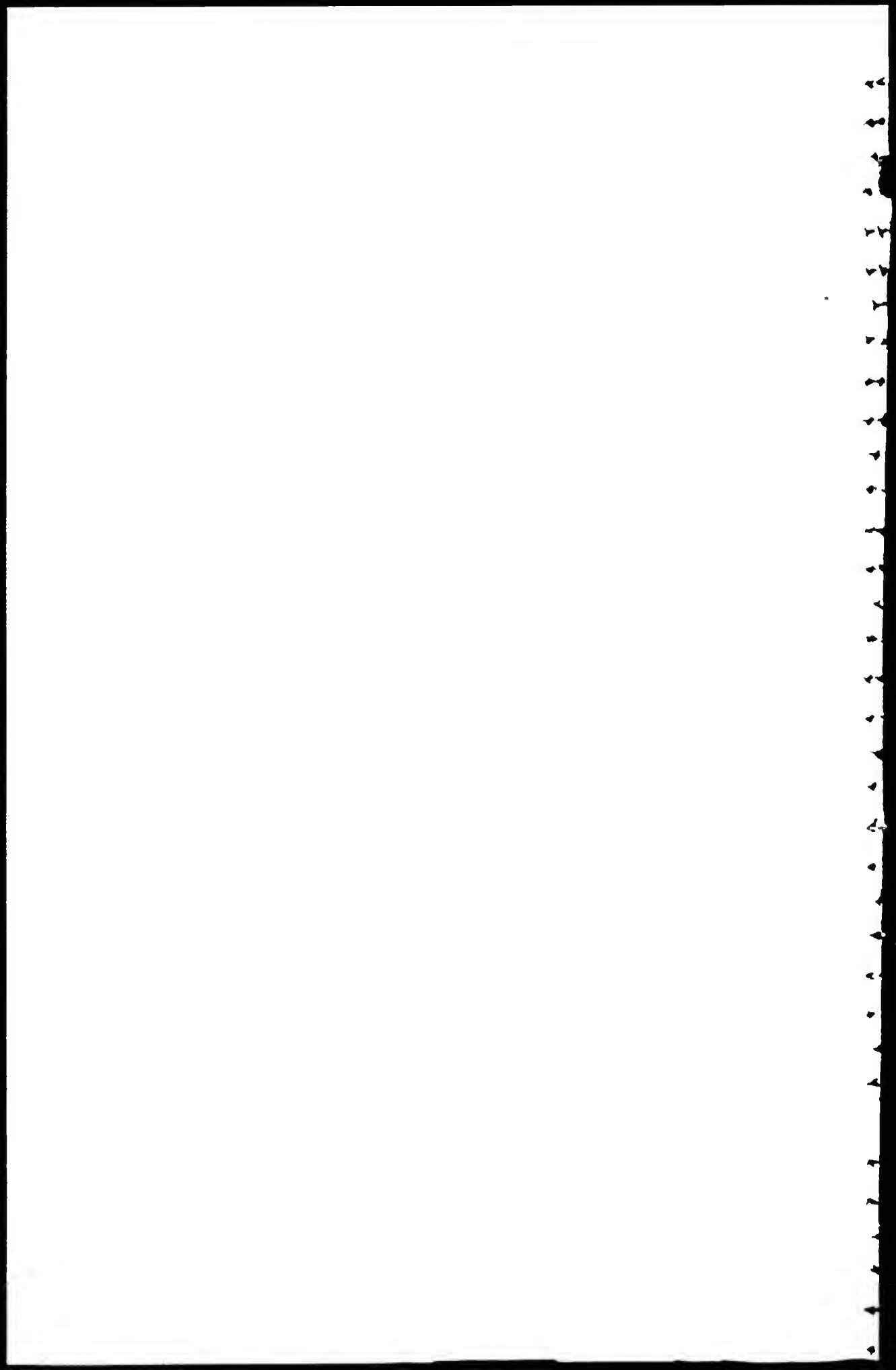
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12948

CHARLES H. PLUMMER, JR., APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

COUNTERSTATEMENT OF THE CASE

On July 6, 1954, appellant was indicted for taking indecent and immoral liberties with one Maria N. Simpson, a female child eleven months old, in violation of District of Columbia Code § 22-3501a (J. A. 52). On July 9, 1954, he entered a plea of not guilty (J. A. 52). On November 12, 1954, appellant was adjudged to be of unsound mind and was committed to the U. S. Public Health Hospital, Lexington, Kentucky. An adjudication by the court that the appellant was of sound mind was made on April 29, 1955 (R. 124), and trial by jury was commenced on September 14, 1955 (J. A. 1). On September 16, 1955, appellant was found guilty (R. 125), and on October 7, 1955, was sentenced to serve a term of imprisonment of from three to nine years (J. A. 53-54). This appeal followed (J. A. 54).

Mrs. Barbara Louise Spriggs testified that she is the mother of Maria N. Simpson, and that Maria was eleven months old on June 18, 1954, the time that the crime took place (J. A. 2). Mrs. Spriggs said she was living at 1211 18th Street, Northeast, Washington, D. C., and occupied two rooms on the second floor and had the use of a kitchen in the basement. She

said that appellant, Charles Plummer, was her boy friend and had been living with her at the 18th Street address for about a month prior to June 18, 1954 (J. A. 6). At about 8:15 p. m., she took her two older children and went down to the kitchen to prepare dinner. Before going downstairs she observed her youngest child, Maria N. Simpson, in her crib asleep, wearing a polo shirt, shirt and diaper. There was no one else in her apartment when she left (J. A. 3). *Mr. Doyle G. Lattner* testified that he lived on the first floor of 1211 18th Street, N. E., and was the landlord (J. A. 10). He said he observed Mrs. Spriggs go downstairs to the kitchen with her two older children, and "somewhere between I would say 7:30 and 8:00, 8:15, or something like that" he saw appellant at his kitchen door, and invited him into his apartment to have a beer (J. A. 11). Mr. Lattner was entertaining three friends in his apartment at that time. After drinking one beer, appellant went upstairs, and approximately forty minutes later Mr. Lattner observed Mrs. Spriggs also go upstairs. He testified that no one else had gone upstairs between the time that Mrs. Spriggs had gone to the basement and appellant had gone up to her apartment (J. A. 12), nor did he hear appellant call Mrs. Spriggs after he had gone upstairs (J. A. 13).

Mrs. Spriggs testified that upon returning to her apartment, having been downstairs in the kitchen for about an hour, she observed Maria completely naked in her bed, bleeding from her vagina, and "there was blood all over the bed." (J. A. 4.) She said appellant was in the bathroom washing his hands. She asked him what had happened and was told that he had picked the baby up and gotten blood all over his hands, but did not know what was wrong with the baby. She took Maria to D. C. General Hospital, where she was treated and then they returned home. That same evening she took Maria to Children's Hospital, and then returned to D. C. General where she talked to a policeman who called the Sex Squad of the Metropolitan Police Department (J. A. 5).

Detective Sergeant Walter E. Grove testified that on June 18th, he was assigned to the Sex Squad of the Detective Bureau (J. A. 18). He said that he questioned appellant at about

3:00 a. m. on June 19, 1954, at 1211 18th Street, N. E. Plummer told Detective Grove that he had stopped in at Mr. Lattner's apartment for ten or fifteen minutes to have a beer, and then went up to the second floor. Mrs. Spriggs was not in the apartment at the time so appellant lay across the foot of the bed to rest (J. A. 19). Detective Grove further testified that appellant told him that after a while he picked the baby up and then called Mrs. Spriggs. Upon further questioning appellant told Detective Grove he had not called Mrs. Spriggs. Plummer also told the officer that he had removed safety pins, a diaper and T-shirt from the baby because they had blood on them (J. A. 19).

On June 19, 1954, blood tests were run on the hands and the penis of appellant. *Private James T. Miller* testified that he was assigned to the identification bureau and had run a series of blood tests on the hands and privates of appellant on the evening of June 19, 1954 (J. A. 25). He described the three tests and then stated that when the test was performed on appellant's hands there was a green reaction to the benzedine test; a green reaction to the malachite green test; and a fluorescence in the luminal test. Only the benzedine test gave a positive reaction when run on the privates of appellant (J. A. 26). Since Private Miller could not qualify as an expert on interpreting the results of these tests, *Lieutenant Joseph B. Bohannon*, the officer in charge of the identification bureau, was called, and after qualifying as an expert in interpreting the results of the blood tests (J. A. 27), he testified that the results of the tests run by Private Miller showed a positive reaction indicating the presence of blood on the regions tested (R. 28-29).

Detective Harvey G. Mattingly, Sex Squad, Metropolitan Police Department, testified that he questioned appellant on the morning of June 19, 1954. He related that appellant told him that when he went upstairs he saw the baby, Maria Simpson, lying in bed with her diaper off bleeding from the privates. He picked the child up, looked at her, put her back in the crib and went into the bathroom and washed his hands (J. A. 29). Detective Mattingly said appellant accounted for the blood on his privates by saying that when he went into the bathroom

with blood on his hands he probably touched his privates. On cross-examination, Detective Mattingly maintained that appellant had changed his story, first saying he had called Mrs. Spriggs when he found the baby bleeding, but later said he did not call the mother (J. A. 31).

Doctor George Hajjar, internist physician at D. C. General Hospital, testified concerning the medico legal examination report made at the time that the baby was examined at the hospital. This report was introduced into evidence (J. A. 16-17), as Government's Exhibit No. 1 (J. A. 55). Doctor Hajjar testified that the examination revealed "fresh vaginal bleeding, and an interior examination revealed a laceration of the posterior wall of the vagina." (J. A. 17). He also said the cause was undetermined.

Charles H. Plummer took the stand and testified that he was living with Mrs. Spriggs on June 18, 1954, and that he arrived at home about 4:15 p. m. (J. A. 32). When he went upstairs he found Mrs. Spriggs lying across the bed, and he could tell something was wrong. He guessed what it was and went downstairs to see Mr. Lattner and asked him had he made "another pass" at Mrs. Spriggs. Mr. Lattner told appellant to mind his own business and that as long as appellant and Mrs. Spriggs were not married he would continue to make passes at her (J. A. 33). Mrs. Spriggs admitted that Mr. Lattner did make passes at her (J. A. 44). Appellant said that later that afternoon he, Mrs. Spriggs, and a friend left the house. Mrs. Spriggs went to the grocery store while appellant and the friend "stopped in a beer garden" (J. A. 33). He drank about two pitchers and one can of beer while at the beer garden (J. A. 37). He returned home at about 8:30, had one beer with Mr. Lattner, then went upstairs. The lights were out and the baby was crying, but appellant lay down across the foot of the bed. After lying on the bed "about five minutes, maybe ten" (J. A. 38), appellant picked the baby up, but when she would not stop crying he turned on the lights and tried to find her bottle (J. A. 33). Then he saw the blood. Plummer then said "From then on I was just thinking about what the average person would be thinking—get that blood off me before somebody thinks I did it" (J. A. 33). Appellant said that he

the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires, either of such person or of such child, or of both such person and such child, or who shall commit, or attempt to commit, any lewd or lascivious act upon or with the body, or any part or member thereof, of such child, with the intent of arousing, appealing to, or gratifying the lust of passions or sexual desires, either of such person or of such child, or both such person and such child shall be imprisoned in a penitentiary, not more than ten years.

SUMMARY OF ARGUMENT

The *corpus delicti* was proved by strong substantial evidence. By showing that an eleven month old baby was found bleeding from a laceration of the vagina, and by showing the presence of a man in the adjacent bathroom with blood on his hands and privates, the prosecution presented substantial evidence of a *corpus delicti*, and the court properly left the determination of the question of whether or not a crime had been committed to the jury.

ARGUMENT

There was substantial evidence of deliberate infliction of injury

Preliminary to his argument, appellant sets forth the *corpus delicti* of the crime. It is then concluded that there was no proof that the child's injuries were not accidental (Br. 3-4).

It is in effect conceded that if this contention fails, the details of the crime and the circumstances surrounding its commission were sufficient to mark the appellant as the perpetrator. The argument is no more than the jury's verdict was not supported by substantial evidence in the particular referred to above. The *corpus delicti* contention is not presented in its familiar frame of reference, a claim of lack of corroboration of a confession. Compare *Ercoli v. United States*, 76 U. S. App. D. C. 360, 131 F. 2d 354 (1942).

When the mother left, the baby showed no sign of injury and was clothed. Returning in a relatively short period of time she found the baby injured, disrobed and bloody, with appellant washing the stains from his hands. This was at the end of an interval in which appellant had exclusive opportunity to inflict the injury. The injury was a laceration of the internal sexual parts of the female child.

On direct examination appellant stated he was washing his hands because he felt he would be thought guilty if anyone observed the blood, which was in itself an indication of consciousness of guilt. He contemporaneously explained to the mother that he had bloodied himself picking the child up. When laboratory tests showed traces of blood on his penis, he belatedly explained that this resulted from intercourse with his paramour. This explanation was rebutted by the latter's testimony that menstruation had occurred a long time before the injury to the child.

Thus there was strong evidence of the deliberate infliction of injury by this appellant, proved by traces left on hands and penis, which must inevitably have marked a criminal caught immediately after the act. Further, exclusive opportunity was shown. In conclusion it is submitted that the criteria of the *Curley* case were amply met. *Curley v. United States*, 81 U. S. App. D. C. 389, 160 F. 2d 229 (1947), *cert. denied*, 331 U. S. 837, *rehearing denied*, 331 U. S. 869 (1947).

It is immaterial, as appellant argues (Br. 4) that the doctor could not identify the source of the injury. This was a matter for the forum to determine and was no more than a statement that the foreign object causing the injury could not be identified by a person not present when the injury was inflicted.

The laceration on the internal sexual organ of this baby, the circumstances surrounding the infliction of the injury, and the bloodstains on the hands and sexual organs of the appellant constitute "unmistakable marks of an assault." This Court is not unmindful of the weight to be given such evidence in cases involving "men who abuse children in secret". *Brown v. United States*, 80 U. S. App. D. C. 270, 272, 152 F. 2d 138, 140 (1945).

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

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